UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.63
20 November 1990

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Fifth session

SUMMARY RECORD OF THE 63rd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 15 November 1990, at 10 a.m.

Chairman: Mr. VOYAME

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GE.90-13771/2614B

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Greece (CAT/C/7/Add.8)

1. At the invitation of the Chairman, Mr. Halkiopoulos, Mr. Condylis and Ms. Stavridou took seats at the Committee table.

2. Mr. HALKIOPOULOS (Greece), introducing his country's initial report (CAT/C/7/Add.8), said that his delegation was honoured to take part for the first time in the commendable endeavour of the Committee against Torture, whose work constituted an outstanding contribution to the eradication throughout the world of torture and other cruel, inhuman or degrading treatment or punishment. In that spirit, he would confine his introduction to a few short comments so as to leave ample time for the Committee to share its vast experience with his delegation.

3. In preparing its initial report, the Greek Government had had both to gain an understanding of the spirit in which the Committee worked and to co-ordinate the participation of several ministries. Any shortcomings or gaps in the report were due to the difficulty of that task rather than to any negligence or indifference. His Government had at all times born in mind the legal and moral importance of the Committee's work.

4. A recent development that had not been mentioned in the report was the submission to the Greek Parliament of the instrument of accession to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. As soon as that instrument had been approved, Greece would be bound by all the international instruments against torture.

5. Mr. KHITRIN (Country Rapporteur) thanked the representative of Greece for his comments and said that, on the whole, the initial report of Greece met the Committee's guidelines. The information conveyed was clear and instructive, particularly the specific references to articles of the Constitution, the Code of Penal Procedure and various court decisions, and it was a useful supplement to the information already received by the Human Rights Committee. The Convention was dealt with article by article in the report, and that was a sound way of proceeding, but he would welcome additional information on articles 10 to 13, 15 and 16, which were particularly important.

6. He was impressed with the fact that the provisions of the Convention had not only been incorporated into domestic legislation, but in some cases had even been surpassed, for example in respect of lie-detectors and prolonged isolation. He would welcome more information in that regard.

7. While it was certainly commendable to have ratified the Convention and brought domestic legislation in line with it, it was also important to ensure its practical implementation. In that connection, he inquired how Greece fulfilled its obligations under the Convention and what problems it had encountered.

8. He would welcome additional information on the functions of judicial bodies, particularly the Prosecutor's Office, and their role in preventing and punishing torture.

9. In connection with paragraph 4 of the report, he asked which officials had the right to arrest a person and what guarantees that person had during the period of custody before he was brought before an examining magistrate. He welcomed the fact that any breach of the provisions governing pre-trial detention entitled the victim to financial compensation, but wished to know whether those responsible for the breach were criminally responsible and whether anyone had been prosecuted for that offence.

10. With regard to paragraph 5, he asked what the difference was, under article 6 of the Constitution, between an offence and a crime and which legislative acts contained definitions or lists thereof. What were the functions, accountability and supervisory powers of the "competent indictment division" referred to in paragraph 5?

11. In relation to the abuse of power under the colonels' dictatorship from 1967 to 1974, as referred to in paragraph 8, he asked what measures had been taken by the State to prosecute those responsible for torture or ill-treatment during that period and whether the victims had received any form of compensation.

12. Turning to paragraph 13, he asked whether any persons guilty of torture had been prosecuted, convicted and punished.

13. He welcomed the fact that Greece had ratified the 1950 European Convention on Human Rights, as stated in paragraph 19 of the report, and the fact that the Convention was part of internal law and was automatically applied by national courts and Government authorities, as explained in paragraph 20, but would like to have specific examples of criminal cases in which reference to the Convention had been made. Perhaps Mr. Condylis, as President of the Athens Court of Appeal, could provide that information.

14. In relation to paragraph 21, he asked which decree or judicial decision contained the declaration whereby Greece had accepted the right to individual petition provided for in article 25 of the European Convention on Human Rights and what was meant by the word "individual".

15. Turning to paragraph 30, he noted that the provisions of article 137D, paragraph 3, of the Penal Code established important guarantees, but nevertheless appeared to allow for evasion of criminal responsibility. He wished to know how that problem was dealt with in Greek legislation.

16. In connection with the irremovability of prosecutors and judges, as mentioned in paragraph 42, he inquired whether there was any procedure that could lead to their dismissal, particularly if they had committed moral offences or crimes.

17. It was commendable that the report contained details on the practical implementation of provisions against torture, particularly in paragraph 47.

READER

He wished to know why, in the case described in that paragraph, the Public Prosecutor had not instituted criminal proceedings until the facts had been brought to the attention of the international community. What guarantees were there that similar instances of alleged ill-treatment were not being concealed?

18. Referring to paragraphs 51 to 53 of the report, he asked whether there was any constitutional provision under which persons being prosecuted for their activities on behalf of freedom could be divided into categories and asked how those activities were assessed. He wondered whether article 33 of the 1951 Convention relating to the Status of Refugees, as referred to in paragraph 51, did not indirectly pave the way for politically inspired unlawful acts. He would welcome some clarification on the reason for the broad interpretation of article 33 of that Convention, the administrative practice in that regard and the number of foreigners who had been extradited in the past five years.

19. In relation to articles 10 and 11 of the Convention, he requested more detailed information on conditions of detention: were the Standard Minimum Rules for the Treatment of Prisoners respected, were detainees held incommunicado, how were places of detention supervised and were investigations conducted into cases of death during detention?

20. With regard to articles 12 and 13 of the Convention, he asked how many complaints of torture or ill-treatment had been received, how those complaints had been investigated and how many persons had been convicted in such cases. In relation to article 14, he wished to know the amount and source of financial compensation paid to victims.

21. Mr. SORENSEN (Alternate Country Rapporteur) commended the Greek delegation on its Government's instructive report and on the excellent definition of torture which was referred to in paragraph 6 of the report, which was not restricted by the concept of purpose and which was broader than the definition contained in the Convention.

22. He endorsed Mr. Khitrin's questions and asked, in relation to paragraph 10 of the report, whether an amnesty law had been adopted in Greece after the restoration of democracy or whether it was still possible to prosecute persons for acts committed during the colonels' régime.

23. Turning to paragraph 14 of the report, he asked whether the law referred to had been adopted before Greece had acceded to the Convention or whether it was a result of the incorporation of the provisions of the Convention into internal law.

24. In relation to paragraph 15 of the report, he asked how many persons convicted of torture had been deprived of their political rights or dismissed from their jobs and how many convictions had occurred between 1974 and 1988 and how many after Greece had ratified the Convention.

25. As to paragraphs 26, 27 and 39 of the report and as a general comment, he stressed that texts of the legislation referred to should be provided in accordance with the Committee's guidelines.

26. In connection with the victim's right to seek redress from the perpetrator of an act of torture or ill-treatment, as mentioned in paragraph 31, he asked whether that procedure took place automatically or had to be instituted by the victim.

27. On the whole, it appeared that the provisions of the Convention had been well incorporated into Greek legislation and that many legal remedies were available in that respect.

28. Turning to paragraph 52 of the report, he asked how long an asylum-seeker was required to wait for a decision on his case and what his living conditions were during that time. Was he confined to a special camp or in any other way deprived of his liberty?

29. In relation to paragraphs 59 and 60, he asked whether a foreigner accused of having practised ill-treatment or torture upon another foreigner in a foreign country could be prosecuted in Greek courts and whether torture was one of the crimes committed abroad which were punishable under article 8 of the Penal Code.

30. Education was a basic tool of action to eradicate torture. In that connection, he inquired whether the provisions against torture taught in the law faculties of Greek universities, as stated in paragraph 70, were also part of the instruction given to the police, the armed forces, medical personnel and prison officers, in accordance with article 10 of the Convention. In relation to article 14 of the Convention, he drew attention to the high-calibre work done by the rehabilitation centre for torture victims in Greece and urged the Greek Government to take account of the centre's need for financial assistance.

31. He would welcome further details on the administration of the prison system: how were prison officers instructed and supervised, what procedure was followed with regard to allegations of torture or ill-treatment, how many such allegations had been received and how were the perpetrators punished? As it was unlikely that a person would be subjected to ill-treatment during the short period of custody, which did not exceed 24 hours, it would be particularly interesting to receive information about the treatment of persons in detention.

32. Ms. CHANET, commended the Greek delegation on the initial report, which showed that, since the restoration of democracy, Greece had been determined to limit and ultimately eradicate torture.

33. Referring to the information of a general nature contained in part I of the report, from which the Committee expected to learn how the provisions of the Convention were incorporated into the country's legal system and implemented, she noted with satisfaction from paragraphs 33 and 34 that, once ratified, international conventions took precedence over any conflicting legal provision, which was automatically repealed. The Convention was, however, not entirely self-executing, and she was thinking in particular of its articles 4, 5, 10 and 11. What steps had been taken under Greek law to fill gaps where no automaticity existed?

34. As to what constituted torture for the purposes of Greek legislation, she had taken note of the description contained in paragraph 26 of the report. However, since the acts referred to in that paragraph were qualified as being "intended to weaken the victim's will", whereas article 1, paragraph 1, of the Convention covered acts of intimidation or acts based on discrimination, she wished to know whether the prohibition and elimination of torture as defined in the Convention were indeed fully provided for by Greek law. Her doubts, and perhaps those of other members of the Committee, might well be dispelled if the full text of articles 137A et seq. of the Penal Code, as referred to on several occasions in the report, were available for consultation.

35. Noting that Greece had adopted various measures whereby the protection of the law was afforded to the victims of torture, she said that complaints or petitions appeared to have to be filed with the Public Prosecutor or another official responsible for investigation proceedings: was there no other channel for seeking redress or compensation in Greece, such as an independent human rights commission or an ombudsman's office?

36. Referring to part II of the report, she requested information in relation to article 2 concerning specific measures to ensure that the acts that were the subject of the Convention were not committed, prevention being a most important aspect of the matter. She wished to know, for example, what external or internal supervision was exercised over the actions of the police forces and how conditions of detention were monitored.

37. As to article 3 of the Convention, she noted with interest from paragraph 51 of the report that, in the practice of the Greek authorities, the principle of non-refoulement applied not only to refugees, but also to persons who did not officially have such status. She associated herself with Mr. Sorensen's question about the length of the waiting period for decisions relating to expulsion and return.

38. On the subject of universal jurisdiction, she wondered whether the implementation of all the provisions of the Convention and, in particular, those contained in articles 5 and 7 was guaranteed under Greek law. For example, paragraph 59 of the report, which dealt with offences by aliens abroad, referred only to acts directed against Greek citizens. It was not clear from paragraph 60 whether torture was included among the crimes committed abroad that were punishable under Greek legislation and it was also not clear whether the procedure outlined in paragraph 66 covered crimes committed abroad by foreigners against foreigners.

39. With regard to articles 12 and 13 of the Convention and, specifically, paragraph 72 of the report, she asked for more information on the different stages of the proceedings during which the accused person's lawyer was or was not permitted to be present. Were there any provisions under Greek law for medical examinations during pre-trial detention or for communication by the accused person with relatives? Did detention incommunicado exist in Greece and, if so, was its duration limited by law?

40. Lastly, as to article 15 of the Convention and paragraph 74 of the report, she asked what the legal basis was for the statement that Greek courts would not take into consideration evidence that was the result of violence of any kind.

41. Mr. BURNS welcomed the initial report of Greece, whose strong commitment to the eradication of torture was reflected in the fact that it was one of the countries that had made declarations under articles 21 and 22 of the Convention and the fact that there had been only two cases in which communications had been sent to the United Nations Commission on Human Rights by Greek citizens claiming to have been the victims of torture.

42. Referring to pre-trial detention, he said that he found the maximum periods mentioned in paragraph 5 of the report to be extraordinarily long and asked whether the information was exact.

43. Unlike Mr. Sorensen, he did not believe that paragraph 6 of the report contained a definition of torture, but, rather, a disjunctive list of different types of activity: perhaps, as Ms. Chanet had suggested, a full reading of the relevant section of article 137 of the Greek Penal Code would provide enlightenment in that connection. However, what he found particularly difficult to understand in paragraph 6 was the statement that the activities listed were "prohibited in accordance with the law". Did that construction not diminish the force of the Convention?

44. Mr. CONDYLIS (Greece) said that, through an oversight, the words "and punished", had been ommitted between the word "prohibited" and the words "in accordance with the law".

45. Mr. BURNS welcomed that clarification. He associated himself with Mr. Khitrin's questions and, in particular, his request for further information on what was referred to in paragraph 5 of the report as the "indictment division". He made a similar request for information concerning the term "correctional division". He also wished to know whether he was correct in believing that compensation for suffering caused by torture could be sought in two ways: either through civil suits brought by the victims against the perpetrators; or during the course of criminal proceedings. If that was true, did the State assume responsibility for Government officials if the latter were found responsible for acts of torture? Was any other administrative process available whereby there could be compensatory vindication for the victims of torture?

46. Mr. GIL LAVEDRA joined in welcoming the initial report of Greece and, like Mr. Burns, commended that country on its declarations under articles 21 and 22 of the Convention.

47. Concerning paragraph 5, he could not agree with Mr. Burns that the established periods of pre-trial detention were excessive. He found them reasonable, since preparations for legal proceedings could require periods of time of the order indicated.

48. With regard to article 2, paragraph 3, of the Convention, he had found no clear confirmation in the report that compliance with an order from a superior officer or public authority could not, under Greek law, be invoked as a justification of torture. Like Ms. Chanet and Mr. Burns he believed that such uncertainties might well be cleared up if the Committee were able to consult the full text of the relevant sections of article 137 of the Penal Code.

49. Further assurances were called for in relation to the issue of universal jurisdiction, especially where the provisions of articles 3, 5 and 8 of the Convention were concerned. Redress and compensation, as referred to in article 14 of the Convention, were other questions that should be dealt with more fully in the Greek delegation's reply.

50. In connection with paragraph 74 of the report, he joined Ms. Chanet in asking what constitutional or legal basis there was for the assurance that evidence obtained under torture would not be taken into consideration by the courts.

51. Mr. MIKHAILOV welcomed the clear and comprehensive report of Greece. He would nevertheless like some details on the contents of Act No. 1500/84 relating to the criminal punishment of persons guilty of torture, as referred to in paragraph 12 of the report. Noting from paragraph 13 that the prescribed penalties ranged from five years' to life imprisonment, he asked how the differentiation was made: were penalties imposed on a case-by-case basis and was any distinction drawn between acts committed intentionally and those committed inadvertently or through negligence?

52. Paragraph 30 of the report referred to cases where the period established by law for prescription was "restored". What was meant by that term and what was the legal basis for it?

53. Paragraph 38 listed the authorities which could order the institution of criminal proceedings: could there be conflicts of opinion between those authorities and, if so, how were they resolved?

54. Paragraph 65 stated that, apart from any international conventions on extradition that might exist, Greek penal procedure usually authorized extradition for any act punishable by a maximum prison sentence of over two years. Noting that, in the Russian text of the report, the words "apart from" had been translated by the words "vne ramok" ("outside the framework of"), he asked whether the relevant international and internal provisions could conflict and whether, for the purposes of a decision on extradition, the period described as "over two years" was in any way subdivided.

55. He noted with interest in paragraph 69 of the report that provisions relating to the victim's right to redress were contained in the Penal Code, but asked whether that right was not also covered by the Civil Code.

56. The CHAIRMAN read out the French text of articles 137A et seq. of the Greek Penal Code, which had been included in the annex to the report.

57. Speaking as a member of the Committee, he welcomed what he had found to be an informative report on the de jure and de facto situation in Greece with regard to the implementations of the Convention and a generally satisfactory submission under article 19 of the Convention. Like several other members of the Committee, however, he thought that the question of universal jurisdiction had not been dealt with fully and drew particular attention to the provisions of article 5, paragraph 2, asking whether they were directly applied in Greece. Paragraph 63 of the report stated that "the Convention as a whole"

had force of law in Greece and that no subsequent procedure was required for its implementation, but he wished to know whether that was entirely true, for example, where the provisions of article 6, paragraph 1, and article 7, paragraph 1, were concerned.

58. The importance of education and training as a means of ensuring the implementation of the Convention could not be overstressed. For that reason, he believed that more extensive measures should be taken than those outlined in paragraphs 69 and 70 of the report and asked the Greek delegation to provide information on existing programmes.

59. More detailed information would be welcome on the subjects of complaints, redress and rehabilitation. He would also like to have additional information on the Yannis Bouranis case, one of the two referred to in paragraph 47 of the report as having been the subject of communications to the United Nations Commission on Human Rights.

60. Speaking as Chairman, he invited the Greek delegation to reply orally at the next meeting to the questions that had been asked.

Initial reports of the Netherlands Antilles (CAT/C/9/Add.2) and Aruba (CAT/C/8/Add.3)

61. At the invitation of the Chairman, Ms. Teekamp, Mr. Piar, Ms. Lubo and Mr. van Dongen (Netherlands) took seats at the Committee table.

62. Ms. TEEKAMP (Netherlands) apologized for the late submission of the report of the Netherlands Antilles (CAT/C/9/Add.2). The discussion on the initial report of the Netherlands (CAT/C/9/Add.1) at the previous session had been fruitful and the Committee could rest assured that her delegation would do its utmost to provide it with all the information it might wish to have.

63. Mr. PIAR (Netherlands) explained that the Netherlands Antilles was an autonomous part of the Kingdom of the Netherlands and consisted of five islands in the Caribbean with a population of about 200,000 inhabitants representing more than 40 nationalities of diverse ethnic origins. The Netherlands Antilles had its own Constitution, which recognized the same basic rights and freedoms as were provided for in the Constitution of the Netherlands. The judiciary, the executive power and the legislature were governed by the same principles as were found in the Constitution of the Netherlands. Most of the rights and freedoms laid down in the various covenants and conventions were protected by the Constitution of the Netherlands Antilles, while others were covered by separate laws. The independence of the judiciary was guaranteed by the Constitution, which provided that judges and the Attorney-General at the Court of Appeal would be appointed by the Queen, who was Head of State for the entire Kingdom. Judges were appointed for life. The Supreme Court of the Netherlands had the power of cassation in the Netherlands Antilles.

64. The Convention had entered into force for the Kingdom of the Netherlands on 21 January 1989. So far, however, torture was not prohibited as such by the Constitution or by the Criminal Code of the Netherlands Antilles. The ratification of the Convention by the Kingdom of the Netherlands did not require the immediate enactment of new legislation.

65. In conformity with article 3 of the Constitution of the Netherlands Antilles, everyone within its territory was entitled to protection of his person. That protection also applied to aliens residing in the Netherlands Antilles. By a broad interpretation of article 381 of the Criminal Code, many forms of torture, including mental torture, could be considered offences and officials who, by an abuse of power, compelled someone to do or not to do something or to tolerate something committed a punishable offence.

66. The Code of Criminal Procedure of the Netherlands Antilles also contained provisions that were important for preventing torture. For example, under article 1, examining officials were not allowed to commit wrongful acts in order to obtain a statement from a suspect. Article 93 banned leading questions.

67. Under the rules on the use of weapons currently in force for crime detection officers, the latter were instructed to use a fire arm only in cases of extreme necessity against persons whose identity was unknown and who were suspected of a serious crime and were trying to avoid arrest.

68. A draft Code of Criminal Procedure was now before the Parliament of the Netherlands Antilles. It contained provisions modelled on the norms accepted in the jurisprudence of the Netherlands and the law of treaties. The draft also codified the law relating to judges, who might, through a criminal action, render an independent decision sui generis in cases where that was urgently required for the proper administration of criminal justice. The Commission that had drafted the new Code of Criminal Procedure would soon embark upon a revision of the Criminal Code. Consideration would be given to the need to introduce a provision whereby torture as such was expressly rendered punishable. The Commission would also give special attention to universal jurisdiction in respect of torture and a study would be made to determine to what extent it was necessary to add the prohibition of torture to article 4 of the Criminal Code, in which the principle of universality was laid down.

69. There was a definite need to enact statutes to implement the provisions set forth in treaties. That explained the efforts made by the Netherlands Antilles to create and develop mechanisms for discharging obligations arising under treaties and statutes. Without wishing to detract from the importance of introducing a prohibition of torture, the Netherlands Antilles was giving priority to optimizing the operation of the police force and the prison system and to exercising closer supervision over them. That was considered to be most important not only for preventing torture, but also for avoiding any indication that it might exist.

70. On 14 July 1989, the Minister of Justice of the Netherlands Antilles and the Minister of Justice of the Netherlands had signed a protocol on closer co-operation between the two police forces. A mixed commission would be responsible for drawing up a specific annual programme for the several parts of the Kingdom of the Netherlands and for the various branches of the profession. Plans for financing the most urgent needs of the police force of the Netherlands Antilles by development aid from the Netherlands were already quite advanced.

71. From 1 to 20 November 1989, the Inspectorate Staff Department of the National Police Force of the Netherlands had carried out a thorough examination of the police force of the Netherlands Antilles, leading to the submission of recommendations to the Minister of Justice on 31 May 1990. In the recommendations, special attention was paid, inter alia, to the training of police officers, for whose recruitment a high level of qualifications was required. Construction work on a new building for the detectives' division of the police force had been started on 29 November 1989.

72. In addition to an internal inspection within the police force itself, the working of the police force was also inspected by the Prosecuting Authority, which was responsible for law enforcement, broadly construed as the enforcement of both law and the legal order. The Prosecuting Authority was therefore responsible not only for combating crime, but also for protecting the legal system. There was a mandatory statutory provision that the Public Prosecutor's Office was formally responsible for supervising every criminal investigation. Consequently, part of its duty was to examine every complaint concerning police behaviour. It condemned every form of torture and would institute criminal proceedings if torture occurred. Moreover, victims of torture were entitled to seek redress by suing the State for damages both under the Code of Criminal Procedure and in a civil action for tort.

73. In the legal system of the Netherlands Antilles, any interested party had the right to file a suit with an independent court if the prosecution had not done its work properly. Under article 26 of the Code of Criminal Procedure, if a judge found that there had been negligence in the prosecution of a punishable act, he might order the Prosecuting Authority to institute criminal proceedings or to continue criminal proceedings that were already under way. As a safeguard, Commissions of Complaint had been established to monitor the way in which complaints against police officers were handled and to receive directly complaints on how a complaint filed earlier with the police against a police officer was being handled and to initiate an inquiry. Public Prosecutors were also members of the Commissions and complaints included both those dealt with through criminal proceedings and those dealt with through disciplinary action.

74. The Government of the Netherlands Antilles had also given priority to improving the prison system and plans had been drawn up to create a Forensic Observation and Guidance Section for the Convict Prison and House of Detention (FOBA) on the island of Curaçao. FOBA was a kind of "intensive care" section for the benefit of any prisoner whose behaviour was found to be so maladjusted as to cause serious problems for himself or others. The sole criterion for hospitalization in FOBA was the existence of a crisis, either in the prisoner's own mind or as a result of his behaviour towards others. FOBA included an observation ward and a guidance ward and was operated in co-operation with the Psychiatric Hospital of the Netherlands Antilles.

75. The possibility that tensions among prisoners might lead to violence by prison guards could not be ruled out. In order to limit such tensions to a minimum, a plan had been developed in March 1989 for prisoners to work in so-called "outside projects" - in other words, to work outside the prison walls for pay. Participation was strictly voluntary. Prisoners who successfully participated in the project were awarded a modest pardon commensurate to the length of their sentence. The project had been very well

received and had been found to be a very effective means of preventing tensions within the prison or, at least, of keeping them down to a minimum. The project had been subsequently adjusted to allow prisoners working on so-called "inside projects" also to qualify for a pardon.

76. The opening of a new and modern House of Detention on 15 October 1990 had been another important step forward in the efforts to safeguard prisoners' rights. The Supervisory Board for the Convict Prison and Houses of Detention, which had from three to seven members, was responsible for supervising all matters concerning the institution, particularly the treatment of prisoners and the observance of rules and regulations, for submitting recommendations to the Minister on matters concerning the institution and for informing the prison governor of its views and making suggestions to him. An independent judge served as chairman of the Supervisory Board, whose members had access at any time to all places where prisoners were held in custody. Through personal contact with prisoners, the Supervisory Board kept itself regularly informed of their wishes and feelings. Inspections of prisons were unannounced. The Supervisory Board was working to the satisfaction of all parties concerned. The recruitment standards for prison officers were nearly the same as for policemen.

77. The Netherlands Antilles provided requesting States with judicial assistance regardless of whether there was a treaty on the subject, since the provision of such assistance was mandatory under article 35 of the Uniform Act on the Organization of the Judiciary.

78. Notwithstanding the measures already taken and the results achieved so far, the Netherlands Antilles made no claim to have completed its work. However, within the limits of its capabilities as a developing country, it was making every effort to meet its obligations under the Convention.

79. Ms. LUBO (Netherlands), introducing Aruba's supplementary report (CAT/C/9/Add.3), informed the Committee that Aruba and the Netherlands Antilles had more or less the same legal and judicial structures. Aruba was an autonomous part of the Kingdom of the Netherlands. It had the right to administer its own internal affairs, while, in external affairs, the Kingdom of the Netherlands as a whole was the subject of international law and had the capacity to conclude agreements and treaties. Aruba's autonomous position within the Kingdom of the Netherlands could lead to a situation in which specific legislation to implement the Convention had not been promulgated in its case.

80. Aruba had had its own Constitution since 1 January 1986. The first chapter was dedicated to human rights. Although the Constitution did not expressly prohibit torture, it did contain provisions under which torture would be considered a criminal offence. The very first article of the chapter read:

> "All persons in Aruba shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted."

Article 3 read:

> "Everyone shall have the right to inviolabililty of his person, without prejudice to restrictions laid down by or pursuant to an Act of Parliament."

That protection also applied to aliens residing in Aruba. Article 16 supplemented article 3 and read:

> "1. Everyone shall have the right to respect for his privacy, without prejudice to restrictions laid down by or pursuant to an Act of Parliament."

Article 5 read:

> "1. Except in cases laid down by or pursuant to an Act of Parliament, no one may be deprived of his liberty.
>
> 2. Anyone who has been deprived of his liberty other than by the order of a court may request a court to order his release. In such a case he shall be heard by the court within a period to be laid down by Act of Parliament. The court shall order his immediate release if it considers the deprivation of liberty to be unlawful.
>
> 3. The trial of a person who has been held in pre-trial detention shall take place within a reasonable period.
>
> 4. A person who has been lawfully deprived of his liberty may be restricted in the exercise of fundamental rights in so far as the exercise of such rights is not compatible with the deprivation of liberty."

Article 4 stated that "Capital punishment may not be imposed."

81. Torture was also not mentioned as such in the present Penal Code. However, Book Two, chapter 20, of the Code contained provisions relating to various forms of assault that amounted to torture, although not explicitly. Furthermore, Book Two, chapter 18, contained various provisions defining offences against personal liberty (arts. 207-299), one of which made it an offence to make serious threats (art. 298). Another relevant provision was article 381 of the Penal Code, under which an official who, by abuse of power, compelled someone to do or not to do something or to tolerate something committed a punishable offence.

82. Pursuant to article 1 of the Code of Criminal Procedure, no one could be criminally prosecuted or sentenced otherwise than in the manner and in the cases provided for by general ordinance. Articles 301 to 307 of the Criminal Procedure Act contained rules for the admissibility of evidence, but it did not explicitly state that evidence obtained through torture could not be admitted in court proceedings. Courts were free to judge the validity of any evidence, but, in legal practice and doctrine, it was generally recognized that the courts should not use or give any weight to evidence obtained illegally. In article 49, paragraph 2, the Act stated that, in all cases in which a suspect was being heard, the judge or public official must refrain from any action designed to obtain a statement which was not made freely.

83. Since there was no doubt that acts which fell within the definition of "torture" given in article 1 of the Convention were already offences under existing Aruban legislation, at first, Aruba had not considered it necessary to draft a separate act to implement the Convention. However, after evaluating the contents of the initial report of the Netherlands in that matter, the Aruban Department of Constitutional and Legal Affairs was considering a proposal to introduce separate legislation prohibiting torture and other cruel, inhuman or degrading treatment or punishment. For that purpose the Aruban Government had set up a special commission which was studying whether to establish torture as a criminal offence in a separate act or in a new article of the Penal Code. The recognition of universal jurisdiction in cases involving torture would also be considered. The Aruban Government was planning to enact legislation along more or less the same lines as that of the Netherlands, whose experience in the matter would be greatly appreciated. In any case, the Aruban Government would inform the Committee as soon as new legislation on those issues had been adopted.

84. The draft Code of Criminal Procedure provided protection for the human being from any kind of torture. However, another very important part of Aruba's legal system were the Police Ordinances. Aruba's first national police force had been set up in 1986 and, since then, Aruba had had to settle all matters relating to the police and the prison system on its own. A special department for police affairs and another department for prison affairs had been set up in Directorate of Public Order and Security. A selection committee had also been established, consisting of the Public Prosecutor, the Superintendent of Police, the head of the police school and some other persons. In the selection and training of both police and prison personnel, increasing emphasis was being placed on proper behaviour, particularly in the treatment of prisoners. Special training programmes had been introduced, and the new Prison Act being prepared gave prisoners the right to complaint to a judge about their treatment by prison staff.

85. Mr. DIPANDA MOUELLE (Country Rapporteur) thanked the representatives of the Netherlands Antilles and Aruba for the comprehensive and interesting oral introductions to their reports. The information on the historical background and structure of the Kingdom of the Netherlands had been particularly helpful and had explained the importance of the Charter for the Kingdom, a legal document sui generis based on voluntary acceptance by the three countries forming the Kingdom.

86. Paragraph 5 of the report of the Netherlands Antilles indicated that the judicial, executive and legislative branches were governed by the principles of the Netherlands Constitution. He asked whether there was a clear separation between the three branches and how the Queen, who was responsible for appointing judges, was assisted in her task. He requested details of the status of judges, how they were recruited, promoted and if necessary, dismissed, and how the judiciary was organized in the Netherlands Antilles.

87. Paragraph 8 of the report said that the Queen was entitled to suspend or annul by decree any legislation or administrative measure in the Netherlands Antilles which conflicted with, inter alia, the Charter for the Kingdom or international law or interests. He inquired whether that provision

did not constitute excessive interference by the executive in legislative matters. He also asked for details of the composition of the Commission assigned by the Government to undertake a general review of the Criminal Code and the Code of Criminal Procedure.

88. Paragraph 10 of the report recognized that torture did not constitute a specific offence in the Netherlands Antilles, but it was commendable that the above-mentioned Commission would consider the need to incorporate a special article dealing with the offence of torture in the new Criminal Code. He wished to know whether any violations of article 3 of the Constitution on the protection of nationals and foreigners had been recorded.

89. He would be grateful for a description of the rules governing interrogation and the legal provisions relating to the prison system and conditions of detention. For example, it would be helpful to know whether minors were separated from adults and prisoners awaiting trial were separated from convicted prisoners and whether prisoners were entitled to appeal to the prison or judicial authorities if they were ill-treated.

90. He asked what the scope of the laws on extradition was, who the members of the Commission that had been appointed to revise the Admission and Expulsion Act were and whether foreigners subject to extradition procedure could appeal and, if so, to whom. With regard to paragraph 28 of the report, he again drew attention to the importance of a precise definition of torture, as the acts referred to in that paragraph would be included in a more restrictive definition than that contained in the Convention. The Committee would appreciate information describing the exact nature of the offences covered by articles 248, 249, 287 to 299 and 300 to 322 of the Criminal Code of the Netherlands Antilles.

91. Paragraph 32 of the report indicated that the principle of universal jurisdiction over the offence of torture did not yet apply and was to be considered by the Commission assigned to review the Criminal Code. He stressed the importance of that principle, which was essential in order to guarantee the implementation of articles 5 and 7 of the Convention. With regard to article 7, he asked what procedure was followed to institute proceedings in cases of criminal offences which fell within the jurisdiction of the courts in the Netherlands Antilles and whether persons could be extradited if they faced the death penalty. He also asked how judicial assistance, mentioned in paragraph 45 of the report, operated in practice and whether it could be given to countries with which the Netherlands Antilles had not concluded any agreement.

92. He wished to know how information on the prohibition of torture was provided, what procedural rules governed the interrogation of suspects, how long they could be held in pre-trial detention, by whom it could be ordered and what the rights of suspects were. It should be specified whether suspects were entitled to inform their relatives, a doctor or a lawyer of their detention and whether they could be held incommunicado. Once persons had been sentenced, after how long might they be granted conditional release? Were prison guards armed and what instructions did they have regarding the measures to be adopted in cases of riots? He requested details on the cases referred to in paragraph 5, of the report and involving police officers under investigation by a special commission appointed in 1985 and asked what, if any, the commission's findings had been.

93. Paragraph 53 of the report seemed to indicate that the State was directly responsible only when a person died under torture. He asked whether that interpretation was correct and, if so, how a person who had been tortured could obtain compensation if, for example, the official responsible was insolvent. He suggested that the State should be held directly responsible for all acts of torture, thus affording all victims the possibility of redress, either through the criminal or the administrative courts. He also asked whether the provisions relating to redress applied to foreigners, whether there had been any cases in which confessions or evidence had been obtained by coercion and what provision the law made with regard to the admissibility of evidence and confessions.

94. Aruba also had no specific definition of torture, although acts that constituted torture were covered by the laws described in paragraphs 88, 91, 96 and 97 of the initial report by the Netherlands (CAT/C/9/Add.1). He emphasized the importance of the steps taken by the Department of Constitutional and Legal Affairs of Aruba to introduce a separate law on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment and said that the Committee could only commend any steps in that direction, together with any measures aimed at establishing universal jurisdiction.

95. Mr. BURNS (Alternate Country Rapporteur), referring to paragraph 49 of the report by the Netherlands Antilles, asked for information on the content of acts that constituted torture. He noted that most courts interpreted penal codes restrictively, a fact that might benefit persons accused of torture, and stressed the importance of the consideration being given by the Commission set up to review the Criminal Code to the classification of torture as a specific crime. He requested further details on the status of the Attorney-General, and how his independence from the executive was guaranteed and asked, whether judges could be dismissed and, if so, how and by whom. He welcomed the co-operation agreement between the Netherlands Antilles and the Netherlands relating to the education of the police force and requested information on how victims of acts of torture could obtain compensation, whether through civil proceedings or by intervening in the criminal trial of persons accused of torture. He also asked in how many cases compensation had been awarded. He would like to know whether the Commission reviewing the Criminal Code and the Code of Criminal Procedure was a standing or an ad hoc body and whether the death penalty or corporal punishment applied in the Netherlands Antilles. He also asked whether there was a standing military force and, if so, what measures were taken to protect civilians from the military.

96. Although the report by Aruba indicated that capital punishment did not exist there, it was not clear whether corporal punishment was practised. He also asked for further details on the way judges were appointed and on their relationship with the executive. He welcomed the indication that steps were under way to allow prisoners to file complaints with judges and inquired how far the process had advanced. Lastly, he asked whether there was a standing military force in Aruba and if so, whether it was subject to different regulations from the civilian authorities.

97. Mr. SORENSEN asked what the exact population of Aruba was. In connection with article 10, he noted that, although the report by the Netherlands Antilles stated that emphasis was placed on respect for human rights in the education of medical personnel, it did not say that their education included a specific component relating to torture and the human rights conventions. With regard to article 14 of the Convention, he noted that compensation generally involved moral, monetary and medical rehabilitation and asked what provision was made for the medical rehabilitation of the victims of torture.

98. The CHAIRMAN, speaking as a member of the Committee, noted that, in paragraphs 26 and 27 of its report, the Netherlands Antilles made no mention of non-refoulement, which was covered by article 3 of the Convention. He was concerned that, if torture was punishable under ordinary law, the penalties might be too lenient and regretted that universal jurisdiction did not yet apply. He asked whether the revision of the Code of Criminal Procedure currently before the Parliament would follow a precise schedule. It was not clear from paragraphs 33 and 37 of the report whether the Netherlands Antilles could take the necessary measures to ensure the implementation of article 6, paragraph 1, of the Convention, while paragraph 27 said that extradition of aliens according to article 4 of the Constitution was possible only pursuant to a treaty. He asked whether that was not contrary to article 8 of the Convention or whether that article took precedence over article 4 of the Constitution. He was intrigued by the meaning of the last sentence of paragraph 47 of the report by the Netherlands Antilles, which seemed to indicate that there might be fewer grounds for requests for judicial assistance as a result of the revision of the Code of Criminal Procedure.

99. With regard to Aruba, he noted from paragraph 4 of the supplementary report that the Department of Constitutional and Legal Affairs was taking into consideration a proposal to introduce a separate law on the prohibition of torture and to establish universal jurisdiction and he welcomed that step. Although the report by Aruba had not answered all the questions that had been asked, he was confident that satisfactory replies would be provided either at the next meeting or in the next periodic report.

The meeting rose at 1.05 p.m.

UNITED
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CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.64
10 December 1990

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Fifth session

SUMMARY RECORD OF THE 64th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 15 November 1990, at 3 p.m.

Chairman: Mr. VOYAME

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Any corrections to the records of the meetings of this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.90-13775/8607A

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Greece (CAT/C/7/Add.8) (continued)

1. At the invitation of the Chairman, Mr. Condylis and Mr. Halkiopoulos (Greece) took seats at the Committee table.

2. Mr. CONDYLIS (Greece), replying to the questions asked by the members of the Committee, said that lie-detectors had never been used in Greece and were prohibited by law.

3. Paragraph 4 of the report clearly indicated that detention was authorized pursuant only to a substantiated warrant. A person arrested flagrante delicto or pursuant to a warrant must be brought before the examining magistrate within 24 hours.

4. A person arrested pursuant to a warrant could be kept in pre-trial detention for a maximum period of six months if the act of which he was accused was an offence, and 12 months if it was a crime. Those periods could be extended to 9 and 18 months, respectively, by decision of the council of the competent three-member court, composed of a presiding judge and two other judges, all appointed for life. In accordance with Greek law, an offence was punishable by up to five years' imprisonment and a crime, by more than five years imprisonment or the death penalty. In Greece, torture was a crime.

5. To date, the implementation of the Convention against Torture had not given rise to any difficulties. However, it should be borne in mind that Greece had ratified the Convention only recently.

6. According to the Code of Penal Procedure, the public prosecutor of the Court of First Instance had to institute proceedings after he had been informed of an offence. If, for any reason, he failed to institute proceedings, his hierarchical superior was empowered to order him to do so. If the latter failed in that duty, the procurator of the Appeal Court was empowered by article 29 of the Code of Penal Procedure to order both the public prosecutor and his hierarchical superior to fulfil their obligations. That provision had been applied only twice.

7. The public prosecutor generally ordered an ordinary investigation conducted by an ordinary judge acting independently and empowered, with the consent of the public prosecutor, to issue a warrant of pre-trial detention against the accused. In the event of a disagreement between the examining magistrate and the public prosecutor, the decision was taken by the council of the three-member court. The accused was entitled to appeal to the council against the warrant of pre-trial detention. The trial had to take place within 12 months after the warrant had been issued; otherwise the accused had to be released. As already mentioned, that period could be extended to 18 months.

8. Public prosecutors enjoyed the same status as judges and, like the latter, were appointed for life. The only disciplinary authority to which

they were subject was, according to the Greek Constitution, that of a disciplinary council composed exclusively of senior judges and prosecutors.

9. Police officers were both authorized and bound to arrest any person in the act of committing a crime. From the time of arrest, the accused enjoyed all the rights of detainees, as referred to in the report and, in particular, the right to consult and be defended by a lawyer of his choice. That right could be exercised directly or through the intermediary of any person designated by the accused.

10. The police and any person investigating a case were bound to inform the accused of his rights. Failure to observe the rights of an arrested person was punishable by up to five years' imprisonment. There did not seem to be any available figures on unlawful detention, but further research would be carried out in that regard.

11. Pre-trial detention applied only to serious offences or crimes where there was substantial evidence and serious reason to believe that the accused might escape or commit other crimes.

12. After the fall of the dictatorship, which had lasted seven years, special legislation had been enacted to provide compensation for the victims. Persons who had lost their jobs during the dictatorship, in particular several judges, had been reinstated. Others, who had been tortured, had been awarded compensation or disability pensions. Furthermore, criminal proceedings had been instituted against the torturers, who had been tried and received harsh sentences. There were no statistics in that regard, but any available information would be provided to the Committee on request.

13. The Convention had not been expressly invoked before the Greek courts and the courts had not handed down any decisions based on it. That was not surprising, since that instrument had only recently been ratified by Greece.

14. The right to individual petition before the European Commission of Human Rights had been recognized on the basis of a declaration of the Minister for Foreign Affairs, in accordance with article 25 of the European Convention on Human Rights.

15. No amnesty law had been adopted after the fall of the dictatorship, but acts which had been committed under the colonels' régime and for which no proceedings had yet been instituted were subject to prescription, since crimes were prescribed 15 years after the date on which they had been committed. However, for an act of torture committed while "popular sovereignty" was being usurped, the time-limit for prescription began as from the date when sovereignty had been restored (art. 137, para. 3, of the Penal Code).

16. In recent Greek jurisprudence, there had been three cases of police officers accused of having committed acts of torture. In the first case, the accused had been acquitted. The other two cases were still pending before the courts. In the past 10 years, no decisions had been handed down or extraditions ordered by the Greek courts in respect of acts of torture or other acts even remotely connected with political activities. No deaths had occurred in prisons as a result of torture.

17. The Greek definition of a refugee was set out in a document which had recently been submitted to the United Nations High Commissioner for Refugees and had been distributed to the members of the Committee.

18. It was impossible to set standards relating to compensation for torture victims, since the amount depended on the specific circumstances of each case and compensation was granted only where the victim had submitted a request for it, for example, during the criminal proceedings.

19. The provision whereby the order of a senior officer constituted no justification for an unlawful act had been incorporated in the Penal Code in 1984, i.e. before Greece had ratified the Convention.

20. The length of the procedure for the granting of asylum varied from case to case. The conditions in which asylum was granted were described in the above-mentioned document on refugees.

21. The words "Apart from any international conventions on extradition ..." in paragraph 65 of the report referred to the principle that international instruments took precedence over internal law. In the absence of any international treaty, the Greek Code of Penal Procedure applied. Extradition was thus possible only in connection with an act punishable by a prison sentence of more than two years, unless an international agreement provided otherwise.

22. With regard to universal jurisdiction, there had been an omission in paragraph 66 of the report. Article 2 of the Greek law ratifying the Convention expressly provided that Greek criminal legislation applied to nationals and to foreigners for any offence which was covered by article 4 of the Convention, in accordance with the conditions laid down in article 8 of that instrument. The law in question recognized the jurisdiction of Greek courts in respect of complaints of acts of torture, regardless of where they had been committed.

23. As explained in the relevant document submitted to the Committee, police officers and prison officials were taught about human rights and the prohibition of torture as part of their normal instruction.

24. According to the legislation on the Greek prison system enacted in 1989, the treatment of prisoners was designed to achieve their social rehabilitation. Each prison had at least one general practitioner, one psychologist and one nurse available 24 hours a day. In prisons with more than 200 prisoners, there had to be a general practitioner and a psychologist in residence for every 200 prisoners. Every prisoner was entitled to be examined by a doctor of his choice in the presence of the prison doctor. Prisoners could be held either in individual cells at least 30 m^2 in size or in wards, where there should be no more than six prisoners and at least 6 m^2 should be allocated per prisoner. Prisoners could be held in solitary confinement for disciplinary reasons for a maximum period of 10 days following a decision by a disciplinary council composed of three members and presided by the prison director. Solitary confinement cells must be the same size as individual cells.

25. Although such provisions were satisfactory, their implementation was much less so. Greek prisons were overcrowded. No new prisons had been built in the past 20 years owing to the shortage of funds and the old prisons were

insufficient and inadequate. The Ministry of Justice intended to reduce the number of prisoners by raising the limit for conversions of terms of imprisonment into pecuniary penalties and allowing prisoners who could not or did not wish to pay such penalties to work for the benefit of the community.

26. Mr. CONDYLIS, replying to a request by Mr. SORENSEN, said he would have the text of the note he had just read out on the Greek prison system distributed to the members of the Committee.

27. Ms. CHANET thanked the Greek delegation, which had answered most of the Committee's questions. She nevertheless had two comments to make. With regard to the definition of torture, she was not sure that Greek legislation fully reproduced all the elements of article 1 of the Convention. As far as universal jurisdiction was concerned, she was not certain that prosecution would really be possible in Greece when a foreigner had committed acts of torture abroad for which Greece had no other jurisdiction than that provided for in articles 5 and 7 of the Convention.

28. Mr. HALKIOPOULOS (Greece), explaining what was stated in paragraph 66 of the report, said that article 438, paragraph 2, of the Code of Penal Procedure provided that, if a crime, such as the slave trade, which was punishable universally and by Greek law, had been committed abroad by a foreigner who was in Greek territory, the Greek courts had jurisdiction to try that crime without extraditing the person who had committed it.

29. Mr. CONDYLIS (Greece) said that article 8 of the Greek Penal Code provided that Greek criminal legislation was applicable and that the Greek courts therefore had jurisdiction in respect of any criminal act for which the international treaties signed and ratified by Greece provided for the application of Greek criminal legislation, regardless of the nationality of the person who had committed the act, whether he was a Greek national or a foreigner, and regardless of the legislation of the country in which the act had been committed. The report clearly indicated, moreover, that the Convention against Torture was part of Greek law.

30. Mr. KHITRIN (Country Rapporteur) thanked the Greek delegation, whose report complied on the whole with the form and content requirements for initial reports. The information it contained and the information that had just been provided orally showed how much importance Greece attached to international human rights standards. It would nevertheless be helpful for the Committee to have further information on the situation with regard to prisons, as well as statistics on complaints by victims of abuses committed by officials.

31. Mr. MIKHAILOV thanked the Greek delegation for the report and the oral replies to the questions asked by the members of the Committee. He did not think that it was necessary, at the current stage, to request further information officially.

32. After an exchange of views in which Mr. KHITRIN and Mr. MIKHAILOV took part, the CHAIRMAN said that, if he heard no objection, he would take it that the Committee welcomed the report submitted by Greece and the oral replies to the questions asked and that it would like the Greek Government, in the next periodic report it would submit in four years, to provide detailed information on the situation of detainees and the régime applicable to them.

33. It was so decided.

34. Mr. HALKIOPOULOS (Greece) said that, in the report it would submit to the Committee in four years' time, his country would not fail to provide the information requested. He hoped that it would then be possible to report on improvements in the Greek prison system.

35. The members of the Greek delegation withdrew.

The meeting was suspended at 3.50 p.m. and resumed at 4.20 p.m.

Initial report of the Netherlands: Netherlands Antilles (CAT/C/9/Add.2) and Aruba (CAT/C/9/Add.3) (continued)

36. At the invitation of the Chairman, Ms. Teekamp (Netherlands), Mr. Piar (Netherlands Antilles) and Ms. Lubo (Aruba) took seats at the Committee table.

37. Ms. TEEKAMP (Netherlands), replying to the question Mr. Burns had asked about the army, said that, according to the Charter for the Kingdom, defence matters were the responsibility of the Kingdom and there was no separate army in the Netherlands, the Netherlands Antilles and Aruba, but, rather, one army for the Kingdom. The Code of Conduct for Military Personnel applied to the Kingdom as a whole.

38. Mr. PIAR (Netherlands Antilles), replying to a question on the separation of powers in the Netherlands Antilles, said that the judicial, executive and legislative powers were independent. The only exception to that principle was provided for in article 50 of the Charter for the Kingdom, according to which the Queen could suspend or repeal any act or measure that was contrary to the law; that article guaranteed freedoms and basic human rights, legal certainty and a smoothly operating administration.

39. With regard to the training of judges in the Netherlands Antilles, he said that a future judge had to have a doctorate in law and follow a special six-year training course involving two years as clerk of a court, two years as deputy prosecutor, one year of training in the Netherlands and one year as deputy judge. Prosecutors received the same training. The revision of the Code of Criminal Procedure and the Criminal Code was being carried out by a joint committee composed of prosecutors and court officials from Aruba and the Netherlands Antilles and a university professor from the Netherlands. The Code of Criminal Procedure was being fully revised, whereas the Criminal Code was simply being amended to include provisions on torture.

40. Interrogations had to be conducted in accordance with the provisions of the Code of Criminal Procedure (arts. 1 and 93, in particular). Complaints against police officers could be made to a specially established commission or filed with a member of the police or a court. In the case of sexual abuse and ill-treatment, the provisions in force in the Netherlands Antilles were the same as those in the Netherlands and Aruba.

41. Replying to a question on extradition, he said that extradition measures were ordered by the Supreme Court, which took account not only of national laws, but also of international treaties. In the absence of an extradition treaty, article 8 of the Convention applied. If the person whose extradition was requested might face the death penalty, extradition was not granted.

42. As to the training of doctors, he said that most doctors in the Netherlands Antilles were trained in the Netherlands and were therefore particularly aware of the question of the protection of human rights. In that connection, he referred the members of the Committee to the report submitted by the Netherlands in April 1990.

43. With regard to procedures for arrest and custody, a suspect could be interrogated by the police for six hours. The deputy prosecutor could extend the period of custody, but he had to inform the prosecutor of his decision within 24 hours, and, if necessary, issue an arrest warrant to be transmitted to the examining magistrate by the prosecutor. The deputy prosecutor could extend the period of custody for up to four days, the prosecutor, for six days, and the examining magistrate, for eight days. If the circumstances so warranted, a judge could then extend the period for up to eight weeks. In the meantime, the prosecutor had to bring the case before a court.

44. As far as police investigations and the collection of evidence were concerned, he noted that, in the Netherlands Antilles, any abuse of power by a police officer during a search or an arrest, for example, could be prosecuted. There had not been any cases in the Netherlands Antilles of evidence obtained under torture. In the event of non-compliance with legal procedures, the evidence obtained was regarded as unlawful.

45. In penal institutions, minors and adult prisoners were kept in separate quarters. Convicted and accused persons were not held in the same prisons. An article of the Criminal Code provided for the death penalty in the case of a crime which had become obsolete, namely, treason. That article would soon be repealed. There had been no executions in the Netherlands Antilles during the present century.

46. The Attorney-General was independent in that his powers were defined by law and the Minister of Justice could not give him any instructions contrary to the law. If the Minister of Justice requested the Attorney-General to suspend proceedings, for example, the judge hearing the case would be authorized, under the Code of Criminal Procedure, to continue the proceedings, even in the absence of any complaint in that regard.

47. Ms. LUBO (Aruba) said that most Aruban institutions and laws were the same as those of the Netherlands Antilles, of which Aruba had been a part until 1 January 1986. Several of the questions concerning Aruba had thus already been dealt with by the delegations of the Netherlands Antilles and the Netherlands.

48. With regard to articles 295, 374 and 314 (a) of the Penal Code, about which it had been said that they provided for penalties that might not be harsh enough, she explained that those articles punished offences involving unintentional harm. However, if there had been an intention to cause death or inflict suffering, other harsher provisions of the Penal Code were applicable.

49. Referring to complaints against the police, she drew attention to paragraph 88 of document CAT/C/9/Add.1 and indicated that, pending the establishment of the Complaints Commission, complaints against members of the police were lodged with an independent judge in accordance with the Code of Civil Procedure. The question of complaints by detainees was dealt with in a bill now before Parliament. The corresponding act should enter into force in Aruba within one year.

50. She assured the members of the Committee that, in four years, her Government would submit a more complete and detailed report.

51. Mr. DIPANDA MOUELLE said that he was not entirely satisfied with the answer that had been given concerning article 50 of the Constitution. He asked whether the Queen somehow played the role of a constitutional council or a supreme court.

52. Mr. SORENSEN said that he would like to know whether, under article 14 of the Convention, Aruba guaranteed victims of torture not only financial compensation, but also medical rehabilitation.

53. Ms. LUBO said that the island of Aruba had only 65,000 inhabitants and did not have a faculty of medicine. Doctors, who studied in Europe or in Latin America, received very thorough human rights training. If necessary, a person who had been subjected to torture would be sent to the Netherlands or cared for in Aruba by specialists from the Netherlands.

54. The CHAIRMAN said that he was satisfied with the report submitted and the explanations provided. He took note of the legislative work now being carried out to bring the laws into line with the Convention and, in particular, its articles 5 to 8.

55. Mr. DIPANDA MOUELLE thanked the members of the Netherlands delegation. He noted that the Netherlands Antilles and Aruba were updating their legislative system and building new modern prisons. It was to be hoped that existing legislative gaps would be filled by provisions in keeping with those of the Convention. Domestic legislation should, for example, provide for a definition of torture and the establishment of universal jurisdiction.

56. He noted with satisfaction that, at the time of the ratification of the Convention, the Kingdom of the Netherlands had not formulated any reservations with regard to articles 21 and 22. He also stressed that, to the credit of the Netherlands Antilles and Aruba, no allegation of torture or police brutality had been formulated, and that was something few countries could claim. He was therefore satisfied with the reports and looked forward to more complete information in 1994.

57. The CHAIRMAN said that the Committee endorsed the conclusions presented by Mr. Dipanda Mouelle. The consideration of the reports of the Kingdom of the Netherlands was thus concluded.

58. The members of the delegation of the Netherlands withdrew.

59. Mr. BURNS, speaking on a point of order, drew the attention of the members of the Committee to the question of a quorum. Because several members were absent, a quorum might not be reached at certain meetings and that might hamper the Committee's discussions and decisions.

60. Ms. CHANET said that, from a strictly legal point of view, the lack of a quorum would hamper only the adoption of decisions.

61. Mr. SORENSEN said that, in his view, the members of the Committee had a duty to be present both out of respect for victims of torture and in order to fulfil the mandate entrusted to them.

62. The CHAIRMAN said that it was necessary to preserve the Committee's credibility and effectiveness out of respect for the victims of torture and consideration for the delegations of States. He invited the members of the Committee to be assiduous.

The meeting rose at 5.10 p.m.

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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.65
23 November 1990

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Fifth session

SUMMARY RECORD OF THE 65th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 16 November 1990, at 10 a.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Initial report of Finland

Statement by the Under-Secretary-General for Human Rights

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GE.90-13793/2631B

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Initial report of Finland (CAT/C/9/Add.4)

1. At the invitation of the Chairman, Mr. Kourula and Mr. Lehtimaja took seats at the Committee table.

2. Mr. KOURULA (Finland) said that Finland had some 5 million inhabitants, with no large ethnic minorities. Fewer than 6,000 Sami people lived in the northern part of the country and there was a similar population of Romanies, or gypsies. Swedish was the mother tongue of 300,000 citizens and enjoyed the same status as the Finnish language. There were less than 20,000 foreign residents. The country enjoyed remarkable prosperity in terms of GNP and per capita income, but inflation was running at over 5 per cent and there was a not insignificant external debt. Unemployment was less than 4 per cent and manpower was in demand in certain sectors. Illiteracy was non-existent, life expectancy high and infant mortality the lowest in the world. With over 90 per cent of the population belonging to the Lutheran State Church, there were no religious conflicts. Over the centuries, Finland had developed a republican legal system that in many ways resembled those of its Nordic neighbours. There was a clear-cut separation between the executive, legislative and judicial powers.

3. His delegation was confident that the initial report would be dealt with in a competent manner and looked forward, under the Committee's guidance, to remedying any discrepancies that might exist between the Committee's wishes and the contents of the report, and to providing any additional information that might be necessary.

4. Mr. LEHTIMAJA (Finland), introducing the initial report (CAT/C/9/Add.4), said that, although legal technicalities had been the main cause of the four and a half year delay between Finland's signature and ratification of the Convention against Torture, the stability of Finnish democracy, the relative absence of ethnic or other group conflicts, the effective legal control exercised over the actions of public officials, the literacy of the people and freedom of the press left little room in the country for commission of the offence of torture as defined in the Convention. Concepts such as "the prohibition of torture" had a rather alien and exotic ring to Finnish ears. In order to ensure respect for the individual as a human being with innate dignity, police officers were, for example, not specifically requested to refrain from acts that constituted torture, but merely invited to treat suspects in a "calm and objective manner".

5. As indicated in the report, international human rights instruments had been incorporated into the body of Finnish laws, with the result that their provisions were as directly applicable as domestic legislation. That, however, begged the question of the extent to which the judiciary and other authorities were actually aware of and familiar with modern human rights law and its requirements in the daily administration of legal and judicial affairs. Human rights instruments had thus far been expressly referred to in very few court cases, although Finland's recent ratification of the European Convention on Human Rights and the human rights dimension of the Conference

on Security and Co-operation in Europe (CSCE) had done much to alert public opinion and focus increasing national attention on human rights law. Human rights education for judges and other authorities, together with the dissemination of human rights documents and the case law of the various human rights implementation mechanisms, were perceived as a major challenge by the present Finnish Government and the Parliamentary Ombudsman had been playing a pioneering role as shown by the many references to human rights instruments in recent Parliamentary decisions and reports. Moreover, international human rights law had become part of the agenda of every conference in the legal field, and that was another promising sign.

6. Referring to the remedies available to victims of human rights violations, he said that civil or criminal proceedings could be instituted in Finland by private individuals as well as by Public Prosecutors. There were also administrative remedies in cases of complaints of official misconduct and the Parliamentary Ombudsman, the Chancellor of Justice and even the President of the Republic all had authoritative roles to play in the process of the control of legality and in the conduct of investigations on behalf of private citizens. In addition, citizens could and often did turn to their representatives in Parliament or to the various non-governmental organizations active in the field of human rights. Remedies were also available, for example, under the Optional Protocol to the International Covenant on Civil and Political Rights or through petition under the European Convention on Human Rights. The media played no small role in redressing public or individual grievances, not least by causing procedures to be speeded up. There was a highly developed and, for the most part, municipally based system of free legal aid for indigent persons which helped them, inter alia, to gain access to international human rights machinery.

7. As shown in paragraphs 88 to 95 of the report, compensation was comprehensively provided for under Finnish law. Primary responsibility for damages resulting from unlawful acts or omissions committed in the exercise of public functions lay with the authorities and compensation was paid out of public funds. Aggrieved persons might turn directly to the State or to the municipality and not necessarily to the perpetrator of the acts in question.

8. Well-developed welfare institutions and public medical care were the sources of rehabilitation measures.

9. A public emergency or state of war could justify certain derogations from the fundamental human rights and freedoms established under the Constitution. Since the International Covenant on Civil and Political Rights and the European Convention on Human Rights had been incorporated into internal law, however, derogations beyond what was permitted under those instruments were impossible.

10. Generally speaking, the self-executing provisions of the human rights instruments to which Finland had acceded were incorporated into internal law by means of a Parliamentary Act and were thus directly applicable. Although what might be termed "blanket enactment" was considered an efficient and effective means of incorporating international human rights law into the national system, it had been proposed by the Constitutional Committee in Parliament that human rights instruments should be made more visible and that their substantive content should be set out more explicitly in the country's

laws. The debate on the question now in progress had shown that there was a "generation gap" within the legal profession: younger lawyers, even before their studies were completed, were to a far greater extent than their elders familiar with and committed to the latest developments in, and the grassroots application of, international human rights law. With time, the views of the former would no doubt prevail; meanwhile, the accession by Finland to any new international instrument involved a thorough review of the relevant domestic legislation, as a consequence of which any national legal provision found to be in conflict with the substance of the instrument in question was revised to ensure conformity.

11. With regard to the agencies and procedures involved in the preparation of reports such as the one before the Committee, he said that the Ministry for Foreign Affairs was chiefly responsible, but, as stated in paragraph 4 of the report, very broad preparatory consultations were held with both public and private bodies.

12. What he had already stated in general terms about the incorporation of the substance of international instruments into Finnish law was specifically true in the case of the Convention against Torture. Its provisions were an integral part of Finland's domestic legislation and were directly applicable. It had not been necessary to adjust the wording of existing domestic legislation to that of the Convention in every detail, since it had been considered sufficient to ensure that there was no obvious conflict between the provisions of internal law and those of the Convention. In the case of different interpretations of the relevant domestic provisions, the interpretation indicated or required by the Convention would prevail.

13. Before and during the process of the ratification of the Convention, several areas of legislation had come under scrutiny: the Penal Code; rules of evidence; extradition law; and immigration law.

14. In the case of the Penal Code, the crucial issue had been whether there was a need for a specific provision to match what was defined as torture in the Convention. There was a considerable NGO lobby in favour of enacting specific provisions for all types of international crimes subject to universal jurisdiction and dealt with in various international instruments. One argument for that legislative technique was that symmetry between domestic and international régimes would facilitate international co-operation in bringing criminals to justice and in criminal matters as a whole. Because the reform of the Penal Code was still under way and involved, inter alia, the reconsideration of crimes against the individual's health, freedom and physical integrity, the issue remained open for the moment. The Committee's views on the matter would be particularly welcome and helpful.

15. The problem with the present Finnish Penal Code in the context under discussion was that it contained an antiquated definition of the crime of assault and battery: according to the main rule, there had to be "infliction of bodily injury or disease" for that crime to be committed, whereas torture as referred to in the Convention might also take the form of severe pain or suffering not necessarily leading to bodily injury or disease. In that connection, he feared that paragraph 41 of the report might add to the confusion in that regard. He therefore read out chapter 21, section 5, subsection 2, of the Penal Code, which specified that whoever, without causing bodily injury or disease, assaulted a person who was defenceless due to his

age, disability or another comparable reasons or who was otherwise defenceless in the light of the circumstances and the manner of the assault gave that person firm reason to fear that his life or health were seriously endangered and should be sentenced in accordance with Finnish law. The crime of assault and battery was thus deemed to have been committed in such circumstances.

16. One school of thought believed that the provision he had just read out would cover most instances of torture as defined in the Convention. In 1991, however, the Parliament would have before it a new proposal which would be submitted by the Ministry of Justice and would redefine the crime of assault and battery as the "exercise of physical violence or otherwise damaging the victim's health, or inflicting pain or delivering the victim into an unconscious or comparable state". That wording might also cover all instances of torture as defined in the Convention.

17. The main debate, however, was between arguments in favour of resorting to definitions that were traditional in Finnish law and those in favour of defining a specific criminal offence equivalent to that described as torture in the Convention. The Parliamentary Ombudsman strongly favoured the latter alternative; one reason for that preference was that, whereas torture as defined in the Convention always involved an abuse of power and the accountability of civil servants of Finnish nationality was expressly provided for in a special chapter of the Penal Code, foreign civil servants could not be judged under Finnish laws for offences or misconduct in the exercise of official functions. In other words, an act by a foreign public official prosecuted and tried by a Finnish court could not be considered punishable as an offence in the exercise of official functions, but could be prosecuted only in accordance with ordinary criminal law provisions. Since, as he had said, the debate remained open, the Finnish delegation would very much welcome the comments of the members of the Committee against Torture on that controversy.

18. It had been suggested that article 15 of the Convention could be implemented at the internal level by introducing a specific exclusionary rule of evidence in the Code of Criminal Procedure, but the idea had been rejected. The general rule of the free evaluation of evidence, submitted orally and directly in court, was regarded as a sufficient guarantee against making use of statements elicited through torture. Strictly speaking, article 15 could be interpreted as warranting an exception to, or limitation of, the rule of free evaluation. On the other hand, the content of article 15 might serve as an evidentiary rule in its own right. Most of the legal profession in Finland was opposed to the idea of introducing exclusionary rules that were inherently alien to its traditional law of evidence. Furthermore, it had been argued that an explicit rule prohibiting statements elicited through torture could be interpreted a contrario as allowing or condoning the use of statements elicited through coercion of a lesser degree.

19. In Finland's internal law, extradition might be barred on the ground of a risk of "persecution" of various kinds, but no explicit reference was made to the risk of torture. That was a shortcoming in the wording of Finland's Extradition Act. It was remedied by the fact that article 3 of the Convention might be invoked as such in order to prevent extradition in cases where a risk of torture had been verified.

20. Under the Aliens Act, there was no explicit obligation for the authorities to assess the possible consequences of refusal of entry at the border. That was at variance with the rule of non-refoulement, but the

shortcoming would be remedied in a new bill currently being debated before Parliament. For the time being, article 3 of the Convention was directly applicable and prevailed over the relevant provision of the Aliens Act as lex posterior.

21. The legislative technique resorted to for the establishment of universal jurisdiction was described in paragraph 47 of the report. The Penal Code contained a reference to the Convention and judges applying the Penal Code were referred to the definition of torture laid down in the Convention. If a person was charged with an offence falling under that definition, the rule of universal jurisdiction must be applied. In practice, however, judges had difficulty in applying the definition of torture given in the Convention, since that definition was not included in the Penal Code. The question whether a specific provision on torture should be introduced in the Penal Code or whether traditional definitions of crimes should be relied on was thus of crucial importance. In his opinion, the rule of universal jurisdiction would be easier to apply if a specific provision on torture was adopted.

22. Article 12 of the Convention required that each State party should proceed to a prompt and impartial investigation wherever there was reasonable ground to believe that an act of torture had been committed in any territory under its jurisdiction. The problem in Finland was that the investigatory body formed part of the police force itself. However, the Committee on Police Offences mentioned in paragraph 77 of the report had proposed the establishment of an independent investigatory body to deal with such situations. In addition, in more difficult cases involving allegations of police brutality, the Parliamentary Ombudsman could use independent investigators who had police training, but no connection with the police force itself.

23. Lastly, he pointed out that the legislation under which a person condemned to life imprisonment could be sentenced to solitary confinement for a maximum duration of four years had recently been repealed and that minors under 18 years of age could now be sentenced to terms of imprisonment or other forms of custody only in very exceptional circumstances.

24. Mr. SORENSEN (Country Rapporteur), thanking the representatives of Finland for the extremely comprehensive introduction to their country's initial report, said that he had particularly appreciated the description of general conditions in Finland and the in-depth discussion that had led to the preparation of the report. Although the introduction had anticipated some of his questions, he noted that the material contained in the annexes should be included in the body of the report, as the information found in the annexes would certainly answer many of the questions the members of the Committee were likely to ask.

25. Paragraph 13 of the report pointed out that the Convention had entered into force in Finland by means of an act, but he was confused by the statement that "The contents of the most important provisions in the Convention have, furthermore, been incorporated in certain other laws". If the Convention as a whole had entered into force, why had it been necessary to incorporate some of its provisions in other laws? The implication that some of the provisions of the Convention were more important than others was particularly disturbing. He had nevertheless appreciated Finland's request for guidance from the Committee in solving the problems that arose with regard to the implementation of the Convention.

26. The provision in chapter 25, section 11, of the Penal Code stating that "whosoever tortures another person in order to obtain a confession" might be interpreted to exclude other forms of torture. Nowadays, torture was rarely practised merely to obtain a confession and it had become far more sophisticated and perverse. It was often used as a means of intimidating or even destroying a person. A comprehensive definition of torture therefore had to be included in the Penal Code in order to prohibit the increasingly common psychological forms of torture. The mere fact of holding a person incommunicado, of not informing his family and of bringing no charge against him did not involve any actual physical abuse, but it was a terrible form of torture. He asked whether the adoption of a special act to implement the Convention in Finland had in any way changed the procedure, as referred to in paragraph 10 of the report, for ascertaining that officials and authorities complied with the law and did not exceed their powers.

27. The range of Finland's international human rights commitments was impressive and he could but encourage Finland to ratify the European Convention on Torture and the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.

28. Paragraph 17 of the report indicated that a bill had been submitted to Parliament to extend the powers of the Chancellor of Justice and the Parliamentary Ombudsman. He asked whether the bill had been made necessary by criticism of existing legislation and, if so, what such criticism had entailed. He particularly welcomed the statistical data provided in paragraph 19 of the report, but would like further details on the last column of the tables, which contained figures on petitions in respect of police procedure. He asked whether the allegations against the police concerned mild ill-treatment or grave misconduct and noted that it would be useful to know what the outcome of the petitions had been and what sentences, if any, had been handed down.

29. Paragraph 20 of the report referred to section 1 of the Directive of the Parliamentary Ombudsman and stated that he was required to take appropriate measures against a judge or other officials guilty of fraud, partiality or gross negligence, although it gave no indication of what the appropriate measures might be. The Finnish delegation should explain to the Committee whether the powers of the Parliamentary Ombudsman were merely investigatory.

30. With regard to the material contained in the annexes to the report on prerequisites for arrest and pre-trial investigations, he asked what the rights of detainees were, whether they were entitled to inform their family of their detention and to be examined by their own doctor, and whether there were any exceptions to the rules governing pre-trial detention.

31. Turning to paragraph 30 of the report, he said that he was disturbed by the statement that "No provision [of the State of War Act] may be construed to allow torture or any other treatment referred to in the Convention". It would be far preferable if there was an explicit prohibition of torture.

32. In its introduction to the report, the Finnish delegation had asked for guidance on whether the Extradition Act should specifically mention torture. He referred the delegation to article 3 of the Convention, which clearly indicated the need to prohibit deportation to a State where the person in

question would be in danger of torture. The number of foreigners living in Finland seemed extremely low by comparison with the number in other Scandinavian countries and he asked whether Finland denied entry to foreigners or whether few foreigners tried to enter Finland. Paragraph 38 of the report mentioned an interesting case in which Finland had granted the extradition of a Soviet hijacker on certain conditions. That solution was quite pragmatic, but, since it had been necessary to surround the extradition with such safeguards, it might have been preferable to refuse extradition. With regard to the issue of jurisdiction, it was not clear from the report whether a Dane who had tortured a Norwegian citizen in Sweden and had then travelled to Finland could be brought before a Finnish court. The last sentence of paragraph 58 of the report, which stated that "Torture can never be deemed a political offence", was extremely important and should be borne in mind when Finland came to draw up a specific definition of torture.

33. With regard to article 9 of the Convention, he had asked whether his impression that Finland's position on international judicial assistance was somewhat reserved was correct. In relation to article 10, he pointed out that the report did not refer specifically to the inclusion of education and information regarding the prohibition of torture in the training of medical personnel. Research in Denmark had indicated that doctors were involved in at least 60 per cent of acts of torture and it was inconceivable that their training should not include information on ethical codes and on the prohibition of torture. As to education, he also requested details of the on-job continued education of prison staff referred to in paragraph 66 of the report and asked whether it included specific courses on torture.

34. No mention was made of the Parliamentary Ombudsman in the section of the report on article 11 of the Convention and he wished to know whether the matters covered by that article were outside the Ombudsman's mandate. He commended Finland on the provisions it had adopted on rehabilitation, although he asked whether there were any specific provisions on medical rehabilitation as distinct from merely financial rehabilitation.

35. Since there were so few blatant acts of torture in the world, the Committee's current objective should be to eliminate cruel, inhuman or degrading treatment or punishment and he welcomed the report's extensive coverage of article 16 of the Convention. The Committee would nevertheless appreciate further information on the provisions described in paragraph 107 concerning indeterminate preventive detention, and, in particular, who ordered preventive detention and solitary confinement, whether an appeal was possible and what guarantees were available to detainees.

36. Ms. CHANET (Alternate Country Rapporteur) thanked the Finnish delegation for its excellent report and extremely comprehensive introduction, which had already answered many of the questions she had intended to ask. Finland had shown a sincere desire to eradicate torture and a keen awareness of the areas in which protection was particularly necessary. She was certain that the quality of the report was a direct result of the in-depth consultations that had taken place with the bodies listed in paragraph 4.

37. With regard to the general legal framework, she agreed with Mr. Sorensen's concern about the apparent distinction between the provisions of the Convention that was drawn in paragraph 13 of the report. She was particularly interested in the role of the Parliamentary Ombudsman, although it was not clear to her

how his functions fitted in with those of the Chancellor of Justice, as referred to in paragraph 17 of the report. The Committee would appreciate clarification of their respective areas of competence, as well as details of the bill submitted to Parliament and mentioned in paragraph 17. Like Mr. Sorensen, she welcomed the valuable statistics provided in paragraph 19 of the report, but she inferred from the headings in table 2 that, unlike the Parliamentary Ombudsman, the Chancellor of Justice could not take initiatives and she asked whether that was in fact the case. She also asked what specific measures the Parliamentary Ombudsman could take against judges and what action the Government had taken in respect of the acts brought to its attention by the Parliamentary Ombudsman.

38. Referring to the Finnish delegation's request for guidance on whether a specific definition of torture should be included in internal law, she endorsed Mr. Sorensen's recommendation and said that, in most countries, the provisions of internal law were not sufficient to prohibit torture as defined by article 1 of the Convention. The same problem had arisen in France and also arose in connection with the establishment of universal jurisdiction. The absence of a specific definition of the crime of torture could create a two-tier system of justice, depending on where the offence had been committed and that danger could be avoided only by bringing internal law into line with the provisions of the Convention.

39. Although paragraph 7 of the report indicated that the maximum penalty for aggravated assault and battery was 10 years' imprisonment, it did not specify what penalty applied when a victim had died. In connection with articles 2 and 11 of the Convention, it would be useful to have details on the duration of police interrogation and the conditions governing police custody, on whether detainees were given a medical examination and allowed to inform their family and on whether persons were held incommunicado. Paragraph 100 of the report referred to the innovative provision according to which minors could never be interrogated without the presence of a witness; she wished to know how the witness in question was chosen. Paragraph 77 referred to the Committee which had been established to examine and make recommendations on the investigation of offences involving alleged wrongful action by the police and which had in turn proposed the establishment of an independent investigatory body; she asked what action had been taken on that proposal.

40. The representative of Finland had indicated that, in the debate under way in Finland on the question of the inadmissibility of evidence obtained under torture, most of the legal profession seemed to be in favour of current practice, which was for the courts to examine all evidence and to decide on its admissibility. She nevertheless expressed concern that, if no measures were taken to restrict the freedom of the courts to assess the admissibility of evidence, Finland might run the risk of violating article 15 of the Convention.

41. With regard to article 16, she noted that the Human Rights Committee had already discussed the problem of indefinite terms of detention when it had considered the report by Finland. Although incarceration for an indeterminate period, as described in paragraph 107 of the report, was reviewed every six months, it was a form of detention that had been abolished in most countries and the Committee would appreciate information on why Finland had retained it. All countries had to deal with dangerous recidivists, but they did so in a manner that was compatible with article 16 of the Convention.

Lastly, she asked the Finnish delegation to explain the meaning of the vague statement in paragraph 109, relating to solitary confinement, that "The rights of a prisoner thus isolated shall not be restricted in any other manner than what necessarily follows from the isolation".

42. Mr. GIL LAVEDRA commended the Finnish delegation on its report, which was among the most comprehensive the Committee had received to date.

43. His main doubt related to the nature of the applicability of the Convention in Finland. Although paragraph 13 of the report stated that the Convention was "an integral part of Finnish legislation to be complied with by the authorities and applied in their practice", it generally reflected hesitancy as to whether the Convention carried the force of internal law or specific legislation was needed to give it that force. The matter was further complicated by the fact that some articles of the Convention were directly applicable, others were not and still others gave rise to uncertainty. It would therefore be useful to know which provisions of the Convention were considered directly applicable in Finland, particularly as far as articles 3 and 9 and the issue of universal jurisdiction were concerned.

44. He associated himself with Ms. Chanet's and Mr. Sorensen's views on the definition of torture. While it was not necessary to incorporate into internal law the exact definition given in the Convention, it seemed that current legislation in that regard needed to be broadened.

45. The provision of the Penal Code to which paragraph 43 of the report referred and whereby certain acts constituted crimes only once they had been accomplished did not seem to be in conformity with article 4 of the Convention. He asked what was meant by the provision, in the same paragraph, that "an attempted crime is punishable only where specifically stated".

46. With regard to article 15, there seemed to be some confusion between the assessment of evidence and the means of acquiring evidence. In that connection, he wished to be provided with the text of chapter 17 of the Code of Judicial Procedure. If article 15 was not directly applicable, then legislation should be enacted to guarantee that evidence obtained as a result of torture could not be invoked in legal proceedings.

47. Mr. BURNS thanked the Finnish delegation for its detailed report and for its willingness to answer the Committee's many questions.

48. In reply to a request for guidance by the Finnish delegation, he stressed that there were two reasons why it was important for countries such as Finland to incorporate a specific definition of torture, such as the one contained in the Convention, into internal law. First, to assimilate torture to other acts of violence, such as assault or abuse of public office, completely and utterly disguised its exceptional nature and reduced the moral stringency of the legislation governing it. In the same way, the definition of genocide was distinct from that of mass murder and that distinction was reflected in the legislation of most countries. The definition of torture certainly overlapped that of assault, murder and possibly even genocide, but differed in various respects, particularly in that torture was commonly carried out by a State agency for certain purposes. Secondly, if Finland and the other Scandinavian countries, which were standard-setters in terms of international normative

behaviour, did not incorporate the Convention definition of torture into their internal law, it would be extremely difficult to persuade other countries to do so.

49. In relation to paragraph 92, he welcomed the fact that Finland had a compensation scheme for crime victims and asked whether that scheme extended to pain and suffering, as distinct from physical injury, in the light of the fact that torture victims frequently sustained extensive mental injury.

50. Mr. KHITRIN congratulated the Finnish delegation on its thorough report, which touched on all the aspects required of initial reports.

51. With regard to the report in general, he asked what the maximum period of pre-trial detention was and who decided on its extension. At what moment was the accused entitled to counsel? How many criminal cases had been brought before the courts, how many persons convicted and how many acquittals pronounced? How were victims compensated for mental injury?

52. In connection with paragraph 38 of the report, he welcomed the Finnish Government's decision to extradite hijackers, especially in view of the recent wave of acts of air piracy. The subjection of innocent persons to the danger which hijacking entailed was tantamount to mental and physical torture. Acts of air piracy were carried out by common criminals or mentally ill persons and were not usually politically motivated. Hijackers who had been returned to the Soviet Union had been dealt with fairly and representatives of the country from which they had been extradited had been allowed to monitor their treatment.

53. Mr. MIKHAILOV joined the other members in expressing appreciation for the Finnish delegation's excellent report and oral introduction.

54. In connection with the victim's right to initiate legal proceedings even in the event that the Public Prosecutor decided not to press charges, as referred to in paragraph 18 of the report, he asked whether that right had been exercised in practice and which legislative provision guaranteed it.

55. Referring to paragraph 23, he asked for information on the role of the National Research Institute of Legal Policy, especially in relation to torture. As to paragraph 58, he did not see why torture should never be deemed a political offence and asked for clarification in that regard.

56. The CHAIRMAN, speaking as a member of the Committee, commended the Finnish delegation on its comprehensive and instructive report.

57. He agreed that it would be useful to incorporate the Convention's definition of torture into domestic legislation, but did not think it imperative to do so. Since many legal decisions were based on general principles, it might be enough to supplement or amend existing provisions on acts of violence in such a way as to include all the acts of torture or ill-treatment covered by article 1 of the Convention.

58. In relation to paragraphs 16 and 17 of the report, he would welcome clarification on the division of responsibilities between the Chancellor of Justice and the Parliamentary Ombudsman.

59. Paragraph 31 of the report stated that an order by a superior or an official could not be construed under Finnish legal practice to justify torture. He asked whether there had been any specific cases in which that provision had been invoked.

60. Finnish law appeared to have some shortcomings with regard to the principle of non-refoulement where the threat of torture was concerned. In so far as the relevant Finnish legislation was applicable only if the person was threatened owing to his race, nationality, religion, political opinion or membership of a certain community or because of political conditions, as stated in paragraph 37 of the report, that legislation was restrictive by comparison with article 3 of the Convention. He was confident that those shortcomings would be remedied, particularly as the Finnish delegation had told the Committee that human rights legislation in its country was being expanded.

61. With respect to paragraph 49 of the report, Finnish law appeared to be in conformity with article 6, paragraph 1, of the Convention, but he would appreciate confirmation of that point.

62. Like Mr. Sorensen, he considered that Finnish legislation on mutual assistance in criminal matters, as referred to in paragraphs 60 to 62 of the report, was restrictive by comparison with article 9 of the Convention because it appeared to require a specific treaty on the subject. He would like to know whether a treaty such as the Convention would qualify as the basis for such assistance.

63. Associating himself with Mr. Burns and Mr. Sorensen, he noted that paragraphs 88 to 95 made no reference to compensation for mental injury. He thought such injury was covered by the general provisions of Finnish law, but would like confirmation that that was indeed the case.

64. Referring to the point made by Mr. Gil Lavedra on article 15, he said that established practice in Finland with regard to the assessment and means of obtaining evidence appeared sound, but that legislation might prove more reliable. Such legislation would, however, have to be carefully worded because merely to establish that evidence obtained under torture could not be invoked in legal proceedings might be construed to mean that any other evidence was acceptable.

STATEMENT BY THE UNDER-SECRETARY-GENERAL FOR HUMAN RIGHTS

65. Mr. MARTENSON (Under-Secretary-General for Human Rights) said that he was very sorry not to have been able to be present at the opening of the session, owing to other long-standing commitments. He was, however, happy to be able to inform the Committee that, since its fourth session, the number of States parties to the Convention had increased from 52 to 54, Malta and Lichtenstein having acceded to it on 13 September and 2 November 1990, respectively. Both the new States parties had also made the declarations provided for in articles 21 and 22 of the Convention. Furthermore, on 1 October 1990, an instrument of ratification had been transmitted by the Federal Republic of Germany, although, given the unification of the two German States, that did not increase the total number of States parties to the Convention.

66. Nevertheless, acceptance of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was still far from universal. The General Assembly and the Commission on Human Rights were therefore intending to continue to appeal to States which were not yet parties to the Convention to take the necessary steps to accept it.

67. At its current session, the General Assembly would consider the Secretary-General's report on the United Nations Voluntary Fund for Victims of Torture. At its ninth session, held in June 1990, the Board of Trustees had evaluated 71 projects financed by the Fund and had heard 16 persons responsible for some 20 projects. The Board had adopted a policy of not financing large-scale projects in full so as not to make them totally dependent on the Fund. The persons responsible for projects were therefore obliged to find external sources of financing and, therefore, to extend responsibility for projects to torture victims. As in the past, the Board had considered that, in some cases, prompt action was necessary to assist victims, whether they were in their own country or elsewhere.

68. The Board had also made special arrangements for funds to be released, in case of need, for the purpose of enabling an individual and members of his family to leave a given country quickly in order to travel to another country where he would have access to the medical care he needed. The decisions taken by the Board covered overall financing of approximately $2 million for projects relating to the specific treatment of victims of torture in fields such as medical care, psychotherapy and social rehabilitation, in addition to the training of medical and paramedical personnel. The Board had also examined 30 new projects submitted to the Fund for support. The growing number of new projects was an indication that the Fund's ability to provide financial support to organizations responsible for helping victims of torture was becoming more widely known.

69. The members of the Committee would no doubt be interested to know that the Commission on Human Rights had authorized the Sub-Commission on Prevention of Discrimination and Protection of Minorities to entrust one of its members, Mr. Theo van Boven, with the task of undertaking a study on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms.

70. Since the Committee's fourth session, the Special Rapporteur of the Commission on Human Rights on questions relating to torture had visited the Philippines at the invitation of the Government and would be reporting to the Commission on his visit at its next session. The Special Rapporteur had continued to receive requests for urgent action or information containing elements which, in his view, justified urgent action. In 1989, 51 cases of that type had been brought to the immediate attention of the respective Governments. Thus far in 1990, the number of cases requiring urgent action was already 65. However, the increase might be due largely to a growing awareness, especially on the part of non-governmental organizations, of the existence of United Nations machinery for the protection and promotion of human rights.

71. The international human rights treaty system was at the core of the Organization's work in the field of human rights today. In his recently published report on the work of the Organization, the Secretary-General had stated that striving "to ensure that international affairs are governed by the

rule of law and universal respect for human rights" was one of the main objectives of the United Nations. Stressing the interdependence of three broad objectives, he had noted that "the resolution of conflicts, observance of human rights and the promotion of development together weave a fabric of peace; if one of the strands is removed, the tissue will unravel".

72. The Committee against Torture had an important role to play in that system, since torture and other cruel, inhuman or degrading treatment or punishment were among the most serious violations of human rights. The Member States of the United Nations had clearly set themselves high standards in the human rights field which were reflected in the various human rights instruments. However, it had been left to the expert treaty-monitoring bodies to act as the agents of needed change and to help to ensure that such international legal norms were translated into concrete respect for the rights of individuals. It was beyond doubt that the standards in the United Nations international treaty system, together with the implementation work done by the Committees, had already had a significant impact on the lives of people around the world. The Committee could rest assured that the secretariat would continue to do its best to assist it in performing that implementation work even more effectively in the years ahead.

73. However, the hopeful developments of the past year and the fact that the importance of human rights was receiving greater international recognition must not be allowed to obscure the underlying reality of the present era, which was still marked by massive and widespread violations of human rights and the intense human suffering that resulted from them. Indeed, the challenge to the international community to promote and ensure respect for human rights was greater than ever before.

74. The Centre for Human Rights was seeking, within the means at its disposal, to respond to that continuing challenge as energetically as possible. In addition to intensifying its activities in support of the implementation of human rights norms and efforts aimed at remedying or correcting a great variety of actual human rights violations, the Centre was also broadening its special focus on information and education, as well as on the provision of advisory services and technical assistance. The decision taken by the General Assembly in 1988 to launch a World Public Information Campaign on Human Rights had greatly enhanced the practical possibilities in the months and years ahead for collaborating with interested United Nations bodies, Member States and non-governmental organizations in the indispensable effort to reach out to the various national and local institutions, as well as to the hundreds of millions of individual human beings who needed information about the nature - and even the existence - of fundamental human rights.

75. With regard to the Centre's programme of advisory services and technical assistance, he was pleased to inform the Committee that the Asian and Pacific Regional Workshop on International Human Rights Standards, which had discussed the question of national and regional arrangements, had been held in Manila in May 1990, with the participation of 35 officials from 23 countries of the region. In June 1990, the Centre had organized, in co-operation with the Government of Canada, a very interesting workshop in Ottawa that had dealt with the Optional Protocol to the International Covenant on Civil and Political Rights. In July 1990, the Centre had organized national training courses in Montevideo and Asunción on the implementation of human rights and the administration of justice. In September 1990, the Centre, in co-operation

with the Government of the USSR, had organized a European workshop on international human rights standards in Kiev. He personally had had the pleasure of participating in most of those meetings. In the near future, the Centre was also planning to organize a national workshop in Caracas and a regional seminar in Cairo for African countries on the administration of justice and human rights.

76. The Convention on the Rights of the Child had been opened for signature only in January 1990, but it had received the necessary minimum of 20 ratifications by 2 August 1990 and had entered into force on 2 September 1990 - by far the fastest completion of the ratification procedure for a human rights treaty to date. Thus far, a total of 129 States had signed the Convention. Fifty-four States had ratified or acceded to it. The first meeting of States parties to the Convention had been scheduled for 27 February 1991 and the Committee on the Rights of the Child was expected to become operational by the middle of the coming year.

77. The Second Optional Protocol to the Covenant on Civil and Political Rights aiming at the abolition of the death penalty had thus far been signed by 14 States, while four instruments of ratification or accession had been deposited. Its entry into force would require at least 10 ratifications or accessions. Since the Committee against Torture had often raised questions and expressed concern about the application of the death penalty, which might assume, in certain forms and under certain circumstances, the connotation of cruel punishment, the secretariat would keep it closely informed of further developments in respect of the entry into force of the Second Optional Protocol.

78. The third meeting of chairpersons of human rights treaty bodies had been held from 1 to 5 October 1990. The conclusions and recommendations of the meeting that might be of special interest to the Committee against Torture included recommendations that the manual on reporting drawn up by UNITAR in co-operation with the Centre for Human Rights and approved by the meeting of chairpersons on the advice of the Editorial Board should be published as soon as possible and be widely disseminated; that the Secretary-General and the General Assembly should be invited to do their utmost to ensure that more resources were provided for secretariat servicing to enable the treaty bodies to function effectively; that steps should be taken to promote greater interaction among the treaty bodies as a means of contributing to the effective development of the human rights treaty system as a whole and, to that end, that consideration should be given to the appointment of several members of each committee to be responsible for following developments in one of the other treaty bodies and reporting thereon to his or her own committee; that, in preparing "general comments", "general recommendations" or "suggestions" on topics that were potentially of major relevance to the provisions of an instrument that was supervised by another body, the committee concerned should consider undertaking some appropriate form of consultation before finalization of the text in question; and that the work of the treaty bodies should be fully reflected in the agenda of the proposed World Conference on Human Rights and that the treaty bodies should be consulted, as far as possible, about the preparations for such a Conference. The report of the third meeting of chairpersons would be submitted to the Secretary-General for consideration at the current session of the General Assembly. The members of the Committee against Torture would, of course, be kept fully informed of future developments in implementing those conclusions and recommendations.

79. The idea of convening a World Conference on Human Rights was clearly gaining support. With the exception of the responses of one Government and one non-governmental organization, all the replies received by the Secretary-General had favoured the holding of such a conference. A report on the subject had been submitted by the Secretary-General to the General Assembly at its current session. The recent positive changes in international conditions and the new perspectives that were thus opening up for the protection and promotion of human rights had been emphasized in several replies, as had been the developments and achievements of the United Nations human rights programme over the past 40 years. Many replies had stated that a World Conference on Human Rights could focus on improving international co-operation in that area and on strengthening the effectiveness of the United Nations system for the promotion and protection of human rights.

80. There had been broad agreement that the success of the Conference would depend in large measure on its preparation. Extensive consultations were called for and the importance of involving expert human rights bodies, the specialized agencies and other organizations dealing with human rights, the academic community and non-governmental organizations in consultative status with the Economic and Social Council had been stressed. The preparations could lead to the submission of specific recommendations for consideration by a World Conference. That was a matter to which the members of the Committee would no doubt wish to give their attention. The secretariat would do its utmost to co-operate with the Committee and assist it in its activities.

81. The CHAIRMAN said that he had attended the third meeting of chairpersons of human rights treaty bodies and hoped to inform the Committee of its proceedings in the course of the following week, if time permitted.

The meeting rose at 1 p.m.

UNITED
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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.66
23 November 1990

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Fifth session

SUMMARY RECORD OF THE 66th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 16 November 1990, at 4 p.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Initial report of Finland (continued)

This record is subject to correction.

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GE.90-13797/8460A

The meeting was called to order at 4.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Finland (CAT/C/9/Add.4) (continued)

1. At the invitation of the Chairman, Mr. Kourula and Mr. Lehtimaja (Finland) took places at the Committee table.

2. Mr. KOURULA (Finland) said he was pleased by the large number of questions put by members, which demonstrated their keen interest in Finland's report. It was unfortunate that the Committee's guidelines concerning the form and contents of initial reports had been misinterpreted and that Finland had omitted to submit annexes with statistics and legal texts. It undertook to communicate such annexes at the earliest opportunity, and his delegation would therefore refrain in its replies from giving detailed information on points dealt with in those documents.

3. Finland should shortly accede to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the ratification of which had already been approved by Parliament. The Finnish section of Amnesty International, which worked in close co-operation with the London headquarters of that organization, had agreed that its role was to express its view on matters of legal policy and not on individual cases.

4. With regard to the aeroplane seized by Soviet hijackers in summer 1990, the Finnish Minister of the Interior had taken the view that the legal conditions for granting asylum had not been met in the case of the first three hijackers. Judgement was made on a case-by-case basis, and it was too soon to predict the fate of the fourth hijacker. The Soviet Union was at a turning-point in its history, and the fact that it had agreed that Finnish psychiatrists and lawyers should attend the trial was important and would tend to indicate that it was becoming a safe country within the meaning of the Convention. The case of one of the hijackers had in fact been brought before the European Commission of Human Rights, which was studying the matter; the Finnish Government awaited its conclusions with interest.

5. Mr. LEHTIMAJA (Finland), replying to questions by Ms. Chanet, Mr. Sørensen and Mr. Gil Lavedra concerning the direct application of the Convention in Finland, said that the legislative provisions incorporating the Convention against Torture into internal law were intentionally laconic. Only certain provisions of the Convention could be invoked directly, and it was for the judicial authorities to decide on their scope in each case. That practice had been sharply criticized by the Constitutional Committee of Parliament as being ambiguous. However, the fact that the Convention might either be invoked directly or for interpretative purposes in connection with the application of the relevant provisions of national legislation made little difference to its effects. The important thing was that judges should know of the existence of that instrument and apply it.

6. As to those members who had inquired about the desirability of including in Finnish legislation a precise definition of torture matching that appearing in the Convention, he explained that there were two different schools of thought in his country. One argued for a classification of offences based on

national criteria, while the other stressed the international nature of certain crimes, such as aerial hijacking and hostage-taking. In defining those crimes, a number of Finnish legal texts had in fact reproduced the language of the relevant international instruments. It remained to be seen whether a precise definition of torture should be included in the new Penal Code currently being prepared. That question would be considered by Parliament in due course.

7. With regard to the provisions of the Penal Code concerning the use of torture in order to obtain confessions, to which Mr. Sørensen had referred, that was an outdated notion which had nothing to do with the concept of torture as defined in the Convention. Torture should actually be understood as meaning any pressure exercised on a person subjected to questioning.

8. In regard to universal jurisdiction, he acknowledged that there would be a problem for the judicial authorities if foreigners or officials of another State were to commit, in Finland, an offence covered by the Convention, since there was no provision of the Penal Code specifically establishing such jurisdiction. That deficiency should be remedied as soon as possible. Referring to Mr. Sørensen's example regarding Danish nationals who committed offences during their winter holidays in Finland, he said that the culprits would be prosecuted in Finland or extradited under arrangements between the Nordic countries for mutual assistance in criminal matters.

9. With respect to article 15 of the Convention, he said that any statement made out of court was in principle regarded as inadmissible unless confirmed in court. However, it sometimes happened, for example, that the judge accepted a deposition by a witness who was unable to appear or referred to an earlier statement when a person gave several different versions of the same facts. Needless to say, any statement found to have been extracted under duress was dismissed as evidence. A decision to incorporate in the Code of Judicial Procedure an explicit provision making any deposition obtained through torture inadmissible would be a purely symbolic gesture, since such depositions were never taken into account under the existing system based on the free assessment of evidence. As the Chairman had observed, the introduction of a restrictive provision in a system based on the free assessment of evidence by judges could create difficulties. A special working group had been set up to study that question and it would certainly find the comments of Committee members extremely useful.

10. Replying to the questions raised by several members concerning the respective powers of the Chancellor of Justice and the Parliamentary Ombudsman in regard to the control of legality, he said that the reason that their powers overlapped to a considerable extent was to give aggrieved citizens a choice as to the authority to which they would submit their complaints. The Bill referred to in the report (para. 17) was primarily a technical measure designed to ensure a better distribution of resources and to avoid duplication, bearing in mind the formidable number of complaints lodged.

11. In answer to the members who had asked whether the authority enjoyed by those two individuals rested on their respective degree of initiative, he said that neither the Parliamentary Ombudsman nor the Chancellor of Justice had the capacity to impose their views, but both were respected authorities which played a guiding and advisory role in the Finnish legal system.

12. In reply to members who had expressed concern that the control exercised by those two authorities might undermine the independence of the judiciary and its members, he said that Sweden and Finland were the only two countries in which those authorities pronounced not only on judicial issues but also on the conduct of judges. The Chancellor of Justice and the Parliamentary Ombudsman called for the prosecution of judges only in the case of serious misconduct, but refrained from giving their opinion on the way in which courts exercised their discretionary authority. In the historical context of the Finnish legal system, therefore, that practice in no way impaired the independence of the judiciary.

13. The great majority of complaints lodged against members of the police concerned abuse of authority, although sometimes the alleged offences involved inhuman treatment under the Convention. Culprits were severely censured and were given a warning or reprimand by the Parliamentary Ombudsman or the Chancellor of Justice. Those penalties might seem lenient to the foreign observer, but in Finland they were extremely important because of the media coverage they received.

14. Referring to the questions on the duration of police custody, he said that, in accordance with the standards established by the European Court of Justice, such custody could not exceed four days. A person so remanded was entitled to the assistance of counsel during questioning, unless the authorities responsible for the investigation found him untrustworthy or considered that the case called for a special procedure, for instance if a terrorist act had been committed.

15. The witness who attended the interrogation at the request of the investigator or the person questioned was usually chosen from among members of the police forces. Naturally, the suspect did not have the right to designate one of his friends or neighbours as a witness. However, the presence of a witness during the interrogation was linked to the nature of the preliminary investigation. For instance, when a person under 15 years of age was questioned, he could ask for his legal representative to be present.

16. Regarding the right of a person in police custody to communicate with his family or to be examined by a doctor, he referred members to the relevant provisions of the Pre-Trial Investigation Act, the text of which would be submitted to them as part of the annexes.

17. In answer to Mr. Khitrin's question on the number of persons detained in Finnish prisons, he said that only 4,000 persons were currently imprisoned, as against a total Finnish population of 4.9 million. The prison population was in fact tending to decrease. Persons in pre-trial detention constituted only 10 per cent of the prison population, a figure that was considerably lower than in many other countries.

18. Replying to members who had inquired about the position concerning recidivists in preventive detention, he said that there were only 13 recidivists currently in that situation. In any case, the Dangerous Recidivists Act should shortly be repealed as part of the revision of the Penal Code. Persons in preventive detention could appeal to a special court, which could grant them parole.

19. Prison conditions were designed to correspond to living conditions outside (without, of course, making prisons into luxury hotels), the penalty consisting in deprivation of liberty and nothing else. The only restrictions that could be imposed were for the purpose of keeping prisoners in detention and ensuring security.

20. While there were only about 20,000 aliens in Finland (refugees, asylum-seekers and immigrants), there had recently been a dramatic increase in asylum-seekers. Whereas in 1989 there had been only 60, there were expected to be more than 2,000 in 1990.

21. With regard to the prevention and punishment of torture, Finland had subscribed both to the applicable European norms and to the Convention. In particular, his country was applying provisions prohibiting doctors from any form of complicity in torture. Prison officials were given special training courses and had a special training centre run by specialists in international human rights law.

22. He had also taken note of the request that prisoners' letters to European or other human rights bodies should not be opened, and would draw his Government's attention to that point. At present, it was only prohibited to open letters addressed to the prison authorities.

23. With regard to the penalties laid down in the Penal Code for various offences, he said that murder was punishable by 8 to 12 years' imprisonment, or 15 years' imprisonment in certain cases; aggravated murder by life imprisonment, with a possibility of parole after 12 years; assault by 2 years' imprisonment; and aggravated assault by 10 years' imprisonment. Only assault that was actually perpetrated was a punishable offence - attempted assault was not.

24. A committee on police offences had been set up, and its opinions would be duly taken into account. It was, however, too soon to know the outcome of that committee's work.

25. Finnish legislation provided for compensation to be granted to torture victims, both for material damage caused and for pain inflicted. The current trend was towards a broad interpretation of the offence of torture for compensation purposes.

26. Replying to a question by Mr. Mikhailov regarding respect for prisoners' privacy, he referred to a recent case in which a prisoner had complained that his telephone conversations had been tapped. The prisoner had unsuccessfully applied to the prosecutor and subsequently to the Minister of Justice, but had then won his case before the Helsinki city court, which had imposed heavy fines on the officials involved. They had lodged an appeal, which was still pending.

27. With regard to the statement in Finland's report that torture was not assimilated to a political offence, he said that the idea was to prevent such assimilation making it impossible to extradite an offender. In Finland, the fact of acting on orders from a superior could not, the courts had ruled, constitute an excuse unless there was a specific legal provision in that regard.

28. Lastly, replying to a question by Mr. Sørensen concerning the statement in paragraph 30 of the report that "Finnish law does not contain any provisions allowing torture or other treatment referred to in the Convention under special circumstances", he said that, if the prohibition of torture was not specifically mentioned, it was doubtless because Finnish jurists tended to use understatements whose meaning was nevertheless clear.

29. Mr. SØRENSEN (Country Rapporteur) thanked the delegation of Finland, a prosperous country in which there were no ethnic, religious or linguistic problems and where there were only 20,000 foreigners. The country's privileged situation aroused great expectations of Finland, and they had been met by its report and the oral explanations just given. He was sure that the comments made by members would be taken into account in Finland's next report, due in four years' time.

30. Clarifications would be desirable concerning the application of article 1 of the Convention, particularly the definition of torture under internal law; the application of articles 3-8, particularly the question of universal jurisdiction; the application of article 9, particularly the mutual assistance policy; and the application of article 15. Lastly, he trusted that the revised Penal Code of Finland would be forwarded as soon as it was adopted, so as to help the Committee to arrive at a better understanding of the application of article 16 of the Convention in Finland.

31. Mr. MIKHAILOV supported Mr. Sørensen's suggestions. In his opinion, the Finland report and the discussion of that document had been extremely interesting. He found the report to be excellent, so much so that the Committee might invite other States parties to study the Finnish experience.

32. The CHAIRMAN said he took it that the comments by Mr. Sørensen and Mr. Mikhailov constituted the Committee's conclusions on the initial report of Finland (CAT/C/9/Add.4).

33. Mr. KOURULA (Finland) thanked the members of the Committee for the friendly atmosphere in which they had considered his country's report. Due account would be taken of their comments when Finland's next report came to be drawn up.

34. Mr. Kourula and Mr. Lehtimaja (Finland) withdrew.

The meeting rose at 5.30 p.m.

UNITED
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Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

Distr.
GENERAL

CAT/C/SR.67
20 December 1990

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Fifth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC) */ OF THE 67th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 19 November 1990, at 3 p.m.

Chairman: Mr. VOYAME

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Organizational and other matters (continued)

*/ The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.67/Add.1.

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GE.90-13819/2720B

The meeting was called to order at 3.05 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

1. The CHAIRMAN informed the members of the Committee that, at their preceding session from 1 to 5 October 1990, the Chairpersons of United Nations human rights treaty bodies had adopted various recommendations on which he invited them to state their views.

2. The Chairpersons had, for example, decided to draw the attention of the General Assembly to the financial difficulties of the Committee against Torture and the Committee on the Elimination of Racial Discrimination, which, unlike other committees, were financed by contributions paid by the States parties. That self-financing system had not yielded good results, since the two committees had had to cancel sessions because of the lack of resources. The Chairpersons had therefore appealed to States parties to fulfil their financial obligations, but they had also requested the General Assembly to consider the possibility of financing the two committees out of the United Nations regular budget.

3. The Chairpersons had also discussed the problem of the shortage of staff which was hampering the smooth functioning of the Committee on the Elimination of Discrimination against Women, which met in Vienna, and they had therefore stressed the need to strengthen secretariat support for all committees.

4. They had also referred to the problem of the non-submission or late submission of reports. There was a total of 767 late reports for the 6 existing committees, which therefore had to consider every possible way of encouraging the States parties concerned to submit their reports and, if necessary, approach the permanent missions in Geneva, New York and Vienna directly. The situation of the Committee against Torture was not yet dramatic, but it had to remain vigilant and, where necessary, send written reminders to, or establish personal contacts with, the States parties concerned.

5. The Chairpersons had also noted that the lack of consistency and harmony between the various international instruments and between those instruments and regional instruments made their implementation more complicated. Identical provisions in different instruments sometimes even gave rise to different interpretations depending on the committee. In order to solve that problem, exchanges of views and more frequent direct contacts had to be encouraged between the members of the various bodies so as to avoid contradictions or overlapping. The members of each committee therefore had to receive the reports of the other committees and it might be useful if five members of each committee were appointed especially to establish contacts with each of the five other committees.

6. It also had to be ensured that new instruments were not too different from the instruments already in force and, whenever possible, they should therefore take the form of protocols relating to one of the existing instruments. The Chairpersons had noted that the confidential nature of some procedures could hamper co-operation between the various United Nations bodies and between those bodies and regional bodies. The principle of confidentiality had to be respected, but should not prevent the committees from exchanging information.

7. The Chairpersons had recommended that technical assistance for national officials responsible for drafting periodic reports should be resumed and intensified. In that connection, they had noted that the Centre for Human Rights was working in co-operation with UNITAR on a manual for the preparation of reports which was intended primarily for such national officials, but which might also provide guidelines and information for new members of the committees. They had suggested that States parties should work together with the Centre for Human Rights to organize information workshops for law enforcement officials and medical and prison officials.

8. The Chairpersons had stressed the need for more publicity about the work of the human rights treaty bodies so that individuals might know what their rights were, which instruments protected them and which bodies they might apply to in the event of a violation of their rights. They had welcomed the organization of press conferences at the end of each session, as in the Committee against Torture. They had noted that the World Conference on Human Rights which was now being prepared would also help to promote the dissemination of such information.

9. The Chairpersons had expressed their appreciation to the non-governmental organizations which regularly provided the committees with useful information that enabled them to carry out their work and had also expressed the view that co-operation with the specialized agencies had to be strengthened.

10. They had requested that the committees should have a documentation room in the Centre for Human Rights where their members could consult all the basic legal texts and the texts of the constitutions of the States parties so that they might be better informed and ask the representatives of States fewer questions during the consideration of their reports.

11. In conclusion, he indicated that the report on the meeting of Chairpersons of United Nations human rights treaty bodies (A/45/636) would be distributed to the members of the Committee as soon as it had been made available.

12. Mr. BURNS said that he was impressed by the number of late reports and would like to know whether the same countries were late in all the committees. If so, he wondered whether it might not be possible to use that argument to urge those countries to fulfil their obligations.

13. The CHAIRMAN said that there was an average of 120 late reports per committee. In the case of the Committee against Torture, 19 of the 46 reports due - or, in other words, two fifths - had not yet been submitted, but, for other committees, the figure was much higher and some States had not submitted a single report since they had acceded to the instruments in force. Each committee was supposed to indicate the names of the States concerned in its report to the General Assembly, but such condemnation was apparently not enough.

14. Mrs. KLEIN (Representative of the Secretary-General) said it was true that the same countries were often late in submitting their reports in all the committees. She nevertheless pointed out that the number of late reports was calculated according to the old system of periodicity, according to which reports had to be submitted every two years. Since that system had been

changed in certain bodies, such as the Committee on the Elimination of Racial Discrimination and the Committee on Economic, Social and Cultural Rights, there should be fewer late reports in the near future.

15. Mr. SORENSEN said he was not sure that it might not be better to be somewhat stricter with States parties. Would it not be possible, for example, to draw up a list of the 10 countries which were the most behind, such as those which had never submitted any reports or had submitted only one?

16. Mrs. KLEIN (Representative of the Secretary-General) said that each committee could indicate in its report to the General Assembly which States parties were behind in the submission of their reports. However, another solution would be for the Chairpersons of human rights treaty bodies to annex a list of countries which were late to their next report to the General Assembly.

17. The CHAIRMAN suggested that the Committee should officially propose in its report that the Chairpersons of human rights treaty bodies should annex to their next report a list of the countries which were behind in the submission of their reports. If he heard no objection, he would take it that the members of the Committee agreed with that proposal.

18. It was so decided.

19. The CHAIRMAN, replying to a question by Mr. Dipanda Mouelle, said that the Chairpersons of human rights treaty bodies had decided that, in order to strengthen co-operation among the various bodies, it would be useful for the members of each committee to receive the reports of the five other committees. They had also proposed that each committee should appoint five of its members to follow the work of one of the five other committees. For example, Ms. Chanet might report to the Committee against Torture on what was happening in the Human Rights Committee and indicate whether a particular problem had been discussed and how it had been solved.

20. Ms. CHANET said that that was an interesting idea, but she was not sure how the members who would be appointed could attend the meetings of the committees whose work they had been requested to follow. Although confidentiality should not be an obstacle to exchanges between the various human rights treaty bodies and, in particular, between United Nations bodies and regional bodies, it did give rise to a problem. She would therefore like to know how such co-operation could be ensured, particularly since the committees had different procedures.

21. Mr. SORENSEN said that he had no objection to the proposal for improving exchanges of information between the committees and thus avoiding unnecessary overlapping, but he was not sure that it was feasible, since it would inevitably have financial implications.

22. The CHAIRMAN said that it was out of the question for a member who was appointed to follow the work of another committee to attend the meetings of that committee. He would be responsible only for reading the summary records of the meetings of that other body and studying its report in order to report on it to his colleagues.

23. Mr. MIKHAILOV said that, although that approach was interesting, it would not be very effective. The committees had to co-operate on specific cases that were very similar and the necessary information could then very easily be provided by the secretariat and the Chairmen of the committees concerned.

24. Mr. DIPANDA MOUELLE said he also thought that the Chairpersons of the human rights treaty bodies were in the best position to exchange the necessary information, since they met periodically. He therefore supported Mr. Mikhailov's proposal, which was more realistic.

25. Mr. GIL LAVEDRA said that, in order to keep abreast of the work of the various bodies, it was enough to study their reports and, if necessary, the summary records of their meetings.

26. The CHAIRMAN said he gathered that the members were not in favour of the idea of appointing five members to follow the work of the five other bodies. All members were therefore invited to keep abreast of the work of those bodies by carefully reading their reports and, if they wanted more detailed information, referring to the summary records of their meetings. It also seemed that the members wanted him to ensure an exchange of information with the other bodies. He could agree to carry out that task if, when a problem arose in the Committee, he could rely on the secretariat to tell him what solutions had already been found in other bodies in similar cases.

27. Mr. SORENSEN said that, in his view, the question of the exchanges of confidential information between the six bodies should be discussed in a closed meeting because the arguments for or against that proposal were confidential. Leaks could have very serious consequences for the work of some bodies. When a leak was not deliberate, it could only be the result of negligence. Since to err was human, the risk of leaks was even greater when more persons were in on the secret. The idea of making the obligation of secrecy applicable to all six bodies so that they could communicate confidential information to one another was not entirely convincing.

28. Mr. BURNS said that he shared Mr. Sorensen's concern and recalled that, when a communication was brought to the Committee's attention, the obligation to respect its confidential nature applied to the Committee and not to the United Nations as a whole. The authors of communications thus expected that the confidential information they supplied to the members would not be revealed outside the Committee. He was therefore surprised that, at their meeting, the Chairpersons of the six human rights treaty bodies had considered that the transmission of information communicated under the seal of secrecy to a particular body did not give rise to any problem, whereas, in communicating such information to other bodies, the body in question was betraying the trust which the authors of the communication had placed in it. Since the mandates of the various bodies differed, moreover, information of concern to the work of the Committee against Torture might be of little interest to the others.

29. Mr. MIKHAILOV said he agreed with Mr. Sorensen that the dissemination of confidential information was contrary to the terms of the Convention against Torture, which required the Committee to keep communications submitted to it confidential.

30. The CHAIRMAN said that he had not meant that the six human rights treaty bodies should communicate all of the confidential information submitted to them. He had merely wished to stress that it would be useful for a particular body to know, for example, whether a case which was before it on a confidential basis was already being considered by another body. He also took note of the members' wish that the discussion should continue in a closed meeting.

31. Mr. DIPANDA MOUELLE asked whether the members of the Committee would be invited to take part in the World Conference on Human Rights to be held in 1993.

32. Mrs. KLEIN (Representative of the Secretary-General) said that the General Assembly was now considering a draft resolution providing for the measures to be taken for the conference and, in particular, for the establishment of a preparatory committee. At their recent meeting, the Chairpersons of the six human rights treaty bodies had stated that those bodies wanted to be directly involved in the preparations and consulted about the various measures under consideration, and that would probably be reflected in the resolution to be adopted.

33. Mr. SORENSEN, referring to the Committee's consideration of the reports submitted by States parties, said that the members should bear in mind the purpose of their mandate, which was to ensure that a State party respected the commitments it had made in acceding to the Convention, not to judge the quality of its report and the replies given by its representatives. It could happen that a State made greater efforts to prepare its report than to prevent and punish torture.

34. The appointment of a country rapporteur and an alternate country rapporteur for each report submitted by a State party has already enabled the Committee to formulate better organized conclusions and it should continue along those lines. Prior to the Committee's consideration of a report, the rapporteur and the alternate might, for example, discuss the report's weaknesses, agree on the questions to be asked and, possibly, consult non-governmental organizations to obtain additional information. It might be advisable to make the names of the rapporteur and the alternate public so that they would be known to the non-governmental organizations. They should also be responsible for leading the discussion and, after taking note of the replies of the representatives of the State party concerned, explaining to them that the Committee would evaluate the report in the light of the questions asked and the replies given. The Committee might transmit its conclusions to the State party directly.

35. With regard to the Committee's conclusions, the country rapporteur and his alternate should, at the end of the day devoted to the consideration of the report, draft a concise text indicating the reactions of the members of the Committee, the additional information that had been requested and the areas in which the State party was not yet fulfilling its obligations under the Convention and calling for measures to remedy shortcomings. In accordance with rule 68 of its rules of procedure, the Committee could thus communicate more detailed comments to the State party and propose specific measures for more effective action to combat torture and any other cruel, inhuman or degrading treatment or punishment.

36. Mr. GIL LAVEDRA said that the representatives of a State party who introduced their country's report were not torturers, but came to describe the legal and administrative measures their country had taken to give effect to its obligations. The members of the Committee therefore mainly had to analyse the facts presented in the report.

37. He noted with satisfaction that the Committee's conclusions had become more specific since a rapporteur and an alternate had been appointed for each report. While the Committee could not reject the report and could only comment on it, it could, in accordance with rule 68 of its rules of procedure, indicate specifically in its general conclusions which articles or provisions of the Convention were not being respected by the State party; it should thus take as much time as necessary to draft the conclusions. It might therefore consider the possibility of no longer formulating its conclusions immediately and of communicating them to the State party concerned some days later.

38. Ms. CHANET said that Mr. Sorensen's comments on the shortcomings of the Committee's methods of work were very interesting. While the appointment of a rapporteur and an alternate had made it possible to ask the representatives of the State party more specific questions and to consider all the areas covered by a report, a more rigorous method would also have to be found for the drafting of conclusions. The following order might, for example, be adopted for the completion of the discussion: following the members' concluding comments, the alternate rapporteur, the rapporteur and the Chairman might submit their conclusions before the representatives of the State party spoke for the last time.

39. The additional information provided by a non-governmental organization might help the rapporteur and the alternate, but that should not become the normal practice, since the delegation of the State party might not appreciate being left out in that way.

40. The rapporteur was in the best position to assume responsibility for requesting additional information. He should nevertheless consult first with the Committee or the Chairman so that the Committee would treat all States in the same way. She therefore proposed that, before requesting additional information, the rapporteur should consult the Committee, on the understanding that the representatives of the State party might return the following day to hear the conclusions formulated in accordance with rule 68 of the rules of procedure.

41. Mr. BURNS said he welcomed the fact that Ms. Chanet, Mr. Gil Lavedra and Mr. Sorensen agreed on important points and, in particular, on the amount of freedom the rapporteur and the alternate should have in asking questions and deciding whether further information should be requested.

42. Consideration might be given to the possibility of requesting the representatives of the State party to return the day after the consideration of the report in order to provide the information requested. It might also be advisable to draw up a list of questions for all delegations in order to ensure equal treatment.

43. The Committee should formulate its final conclusions more carefully so that, during the consideration of the next report, its attention would be focused on specific points that would enable it to evaluate the efforts made in the meantime by the State party.

44. Mr. MIKHAILOV said he agreed with Mr. Sorensen that the Comittee's methods had to be improved. The Committee was sometimes too harsh with States parties whose legislation and practice were generally in keeping with the Convention and not critical enough towards States parties which were not in that situation. An objective preliminary review of each report by the rapporteur and the alternate would make for a better evaluation of the situation.

45. Mr. KHITRIN suggested that, following the consideration of each report, the rapporteur and the alternate should prepare a draft decision which they would submit to the Committee for adoption.

46. Mr. GIL LAVEDRA suggested that, 24 hours before a State party submitted its report, the rapporteur and the alternate might submit draft conclusions drawing attention to the ways in which the Convention was or was not being implemented satisfactorily, thus helping the Committee to consider some reports which were too vague.

47. Mr. SORENSEN said that it was not logical to submit draft conclusions 24 hours prior to the consideration of a report. That should be done afterwards. He personally would be in favour of the solution posed by Mr. Khitrin, namely, that, after studying the report for which he was responsible, the rapporteur would submit a draft containing detailed recommendations; that would be a means of guaranteeing the full and equitable treatment of all reports.

48. The CHAIRMAN, speaking as a member of the Committee, said that, even if it was not satisfied with a report, the Committee had to avoid being overly courteous and giving the representatives of States parties the impression of having successfully passed a test; it should therefore formulate its conclusions on each article more specifically. That would, however, require a lengthy discussion in the Committee and it would then no longer be possible to deal with two reports on the same day.

49. Mr. MIKHAILOV said that the Chairman himself might draft general conclusions, since any requests to States parties for additional information had to be made on the Committee's behalf.

50. Mr. GIL LAVEDRA said that, if an improvement in methods took place as of the next session, he wondered what effect those methods might have on reports that had already been considered.

51. Mr. BURNS, replying to Mr. Gil Lavedra, said that, when a court amended its procedures, they normally applied to future cases, not to past cases. That should be particularly true of a body which was new and which had to improve its methods on the basis of experience.

52. The CHAIRMAN proposed that the Committee should think about the suggestions just made until the following day. It could then resume its consideration of its methods of work on the basis of an oral report by Ms. Chanet and Mr. Sorensen.

53. It was so decided.

54. Ms. CHANET said that, in some cases, the annexes communicated by States parties were too voluminous to be sent to all members of the Committee. They should, however, be transmitted at least to the rapporteur and the alternate responsible for preparing the consideration of the report in question. The other members should at least have the legal texts referred to in the report, particularly the relevant provisions of the Penal Code, even if it was not in their language.

55. The CHAIRMAN said that there had already been a request for the distribution of texts to the members of the Committee. The secretariat should again draw the attention of States parties to that matter.

56. Mr. BRUNI (Secretary of the Committee) said that the secretariat immediately sent the rapporteur and the alternate the report and annexes transmitted to it by the State party, even before they were published and translated, together with an explanatory note. The distribution of annexes to the members of the Committee might or might not give rise to problems, depending on the case. When a State party sent the texts of its Constitution and its Penal Code, it was difficult to make copies for all members. Sometimes, a State party itself sent several copies, as Finland had done for its Penal Code. The secretariat would do its best to transmit the relevant texts to the members of the Committee and, in particular, to the rapporteur and the alternate. In general, the secretariat was at the disposal of the members of the Committee to meet their requests in that regard.

57. The CHAIRMAN said that, although it was difficult to photocopy a penal code, the text of the articles referred to could be reproduced and distributed.

58. With regard to the appointment of rapporteurs and alternates for the reports of States parties, he recalled that the following rapporteurs and alternates had already been appointed for the following four reports: for the report of Czechoslovakia, Mr. Mikhailov and Ms. Chanet; for the report of Cameroon, Ms. Chanet and himself; for the report of Chile, Mr. Díaz Palacios and Mr. Gil Lavedra; and, for the report of Ecuador, Mr. Gil Lavedra and Mr. Sorensen. Having consulted the members of the Committee, he also proposed that Mr. Dipanda Mouelle and Mr. Burns should be appointed for the additional report of China and that Mr. Burns and himself should be appointed for the initial report of the United Kingdom.

59. It was so decided.

60. The CHAIRMAN said that, in press releases, the members of the Committee should not be described as experts from particular States; that should be made clear to the Information Service, which should refer only to the nationality of the members.

61. It was so decided.

The public meeting rose at 5 p.m.